APPENDIX

October Term, 1973

No. 73-6033

Sharon Roe and Dorothy Poe, on Behalf of Themselves and Others Similarly Situated, appellants

v.

Nicholas Norton, Individually, as Commissioner of Welfare of the State of Connecticut, and on Behalf of Others Similarly Situated, appellee

On appeal from the United States District Court for the District of Connecticut

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A DOCKET ENTRIES UNDER DOE V. NORTON, CIVIL NO. 15579

Date 1973	PROCEEDINGS
1/29	Complaint Request for 3-Judge Court, Affidavits of Raymond J. Kelly, Robert C. Beckman, Sally Smith, Motion for Permission to Proceed in Forma Pauperis an Order Permitting same (Blumenfeld, J.), Certificate of Counsel, Motion for Temporary Restraining Order, filed and entered at Hartford.
1/29	Order to Show Cause entered for appearance at Hartford on Feb. 13, 1973 at 2:00 P.M. Blumenfeld, J. M-2/2/73
1/29	Summons issued and together with copies of same and of Complaint, Affidavits, Motions and Orders, handed to the Marshal at Hartford for service.
2/ 5	Marshal's Return Showing Service, filed.—Summons, Complaint & OSC
2/ 7	Appearances of James M. Higgins and Michael Anthony Arcari, Asst. Attys. General entered for defendant.
2/ 8	Motion to Separate Causes of Action, Motion to Dismiss and Notice of Motion, filed by defendant at Hartford.
2/13	Plaintiffs' Brief in Support of their Motion for Temporary Relief, filed at Hartford.
2/13	Statement of Raymond J. Kelly re: Donna and Ellen Doe, filed at Hartford.
2/13	Motion for Protective Order Re: Identity of Named Plaintiffs, filed at Hartford.
2/13	Hearing on (1) Order to Show Cause; (2) Application to Convene a Three-Judge Court; (3) Defendant's Motion to Separate Causes of Action; and (4) Defendant's Motion to Dismiss. Decision Reserved on all 4 motions. Blumenfeld, J. M-2/14/73
2/21	Supplemental Memorandum in Support of Temporary Restraining Order, filed by plaintiffs.
2/26	Designation of Judges: Hon. William H. Timbers, C.J.; Hon. M. Joseph Blumenfeld, D.J.; Hon. Jon O. Newman, D.J., entered. Friendly, C.J., U.S.C.A. M-2/26/73. Copies mailed to all counsel and to 3 Judges.

Date 1973	PROCEEDINGS
2/26	Order entered in Civil Action No. 15589 consolidating that action with Civil No. 15579. Newman, J. M–2/26/73. Copies mailed to all counsel and to 3 Judges.
2/28	Ruling on Application for a Preliminary Injunction, entered. The application for a preliminary injunction is denied. However, the Court, as soon as it is designated, will expedite a hearing on the merits. So Ordered. Blumenfeld, J. Copies mailed from Hartford to all counsel. M–3/1/73. Copies to 3 Judges.
3/ 5	Copies of file in Civil Nos. 15579 and 15589 mailed to 3 Judges.
3/ 9	Substitute Complaint, filed by plaintiffs. Copies to 3 Judges.
3/ 9	Incorporation of Exhibits, filed by plaintiffs. Copies to 3 Judges.
3/12	Plaintiffs' Motion for Leave to Take Depositions by Means of a Tape Recorder, filed. Copies to 3 Judges.
3/12	Copy of Letter from Judge Newman to Attorneys David Rosen, Esq. and Edward Dolan, Esq., appointing said attorneys to represent the children and enclosing copies of court's files, filed. Copies mailed to 3 Judges Copies to counsel.
3/19	Notice of Hearing Re Plaintiffs' Motion for Leave to Take Depositions by Means of a Tape Recorder, filed. Copies to 3 Judges.
3/19	Motion to Permit Introduction of Plaintiffs' Depositions, Notice of Motion and Memorandum in Support of Motion, filed. Copies to 3 Judges.
B	DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH and all others similarly situated vs. NICHOLAS NORTON, Ind. and as Commissioner of Welfare of the State of Connecticut.
3/26	(1) Plaintiff's Motion for Leave to take Depositions by Means of a Tape Recorder; (2) Plaintiff's Motion to Permit Introduction of plaintiff's Depositions—calendar endorsement as follows: "Disposed of by conference." Both motions endorsed as follows: "Off" Blumenfeld, J. M–3/27/73. Copies to all counsel.
4/16	Summary of Affidavits, filed by plaintiffs. Copies to 3 Judges.
4/16	Notice of Filing of Affidavits as Evidence, filed by plaintiffs. Copies to 3 Judges.
4/26	Plaintiff's Brief, filed. Copies to 3 Judges.
4/30	Stipulation filed at Hartford.
4/30	Motion of the Connecticut Civil Liberties Union to File Brief Amicus Curiae, filed at Hartford.
4/30	Brief on Behalf of Children, filed at Hartford.
4/30	History of the Statute, filed at Hartford.
4/30	Answer of the Defendant, filed at Hartford.
4/30	Answer of the Defendant (Civil No. 15589), filed at Hartford.
4/30	3-Judge Court Hearing on the Merits. Argument by Counsel for Plaintiffs, State (Deft.) and Children. Defendant's Exhibit A, filed. Children's Exhibits 1 thru 5 filed. Decision Reserved. Timbers, C. J.; Blumenfeld, D. J.; Newman, D. J. M–5/2/73.
5/29	Motion of "Y" to Intervene as Plaintiff, Motion for Permission to Proceed in Forma Pauperis and Affidavit, filed. Copies mailed to 3 Judges.
7/ 2	Plaintiff's Response to HEW Regulation 45 CFR Sec. 233.90, filed. Copies to 3 Judges.

PROCEEDINGS

Date 1973	
9/ 5	Memorandum of Decision Findings of Fact and Conclusions of Law, filed and entered. Application for a permanent injunction is denied and the case is dismissed. So Ordered. Timbers, U.S.C.J., Blumenfeld, U.S.D.J., Newman, U.S.D.J. M-9/6/73. Copies mailed to all counsel and 3 judges by Htfd. office. Copy to Judith Mears.
9/ 7	Judgment entered that the application for a permanent injunction is denied and that this action be dismissed. Markowski, C. M-9/7/73. Copies mailed to all counsel and to 3 Judges.
11/ 5	Notice of Appeal to the Supreme Court of the United States filed by plaintiffs. Copies to all counsel and to 3 Judges.
11/ 5	Notice of Appeal to the Supreme Court of the United States filed by children of Donna Doe, Linda Loe, Rena Roe and Sally Smith plaintiffs. Copies to all counsel and to 3 Judges.
12/ 4	Motion to Dismiss Appeal, filed by plaintiffs. Copies to 3 Judges.
12/17	Order entered on plaintiffs' Motion to Dismiss Appeal granting same. Timbers, U.S.C.J., Blumenfeld, U.S.D.J., Newman, U.S.D.J. M-12/17/73. Copies mailed to all counsel and to 3 Judges.

C DOCKET ENTRIES UNDER ROE v. NORTON, CIVIL NO. 15589

1/31	Complaint, Request for 3-Judge Court, Motion for Waiver of Fees and Order thereon granting same (Newman, J.) and Affidavits filed an entered. Summons issued and together with copies of same and of complaint, Motion, Order and Affidavits, handed to the Marshal for service. M-2/6/73
2/ 9	Application to Convene Three-Judge Court, filed by plaintiffs.
2/ 9	Motion to Seal Affidavits, filed by plaintiffs. "Motion Granted Ex Newman, M-3/5/7 Copies
2/ 7	Appearance of James M. Higgins and Michael Anthony Arcari, entered for defendant Nicholas Norton.
2/20	Hearing on Application to Convene a Three-Judge Court. Decision Reserved. Newman, J. M-2/20/73
2/26	Order entered consolidating action with Civil No. 15,579, and denying application to convene a separate three-judge court as unnecessary. Newman, J. M-2/26/73. Copies mailed to all counsel.
3/ 8	Marshal's Return Showing Service, filed.—Summons & Complaint. Make docket entries in Civil No. 15579
9/ 5	Memorandum of Decision, Findings of Fact and Conclusions of Law, filed and entered. Application for a permanent injunction is denied and the case is dismissed. So Ordered. Timbers, U.S.C.J., Blumenfeld, U.S.D.J., Newman, U.S.D.J. M-9/6/73. Copies mailed to all counsel and 3 Judges by Htf. office.
9/ 7	Judgment entered that the application for a permanent injunction is denied and that this action be dismissed. Markowski, C. M-9/7/73. Copies mailed to all counsel and to 3 Judges.
11/ 6	Notice of Appeal to the Supreme Court of the United States filed by plaintiff. Copies to all counsel.
12/28	Motion for Permission to Docket Appeal in Forma Pauperis and Affidavit, filed by Plaintiffs.

Filed ——— 31, ——— 1973

1 In the United States District Court for the District of Connecticut

Civil No. 15589

SHARON ROE, INDIVIDUALLY AND ON BEHALF OF HER DEPENDENT MINOR CHILD AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY, AS COMMISSIONER OF WELFARE OR STATE OF CONNECTICUT, AND OF BEHALF OTHERS SIMILARLY SITUATED, DEFENDANTS

Complaint

1. This is an action for declaratory and injunctive relief authorized by Title 42 U.S.C. § 1983, to redress the deprivation of rights, privileges and immunities secured to the plaintiffs and all others similarly situated by Section 1 of the Fourteenth Amendment, the First Amendment, the Fourth Amendment, the Ninth Amendent, all of the United States Constitution and the Social Security Act, Title 42 U.S.C. § 1352 *et seq.*, and regulations promulgated thereunder.

2 2. Jurisdiction is conferred on this Court by Title 28 U.S.C. § 1331 and § 1343.

3. This is a proper case for determination by a three-judge court pursuant to Title 28 U.S.C. § 2281 and § 2284, in that it seeks an injunction and declaratory judgment to restrain the defendants from applying, enforcing and implementing Connecticut General Statutes § 52–440(b) (1971 Public Act 439), on the grounds that said statute violates the right of privacy of the class of plaintiffs, and denies them equal protection of the laws. Copies of said statute and regulations issued thereunder are attached hereto and incorporated herein as Exhibits A and B.

4. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and all others similarly situated. A person is similarly situated if she is the mother of any child born out of wedlock or the mother of any child born to any married woman during marriage, which child shall be found not to be issue if the marriage by any court of competent jurisdiction.

The persons in the class are so numerous as to make joinder impracticable; there are common questions of law and fact; plaintiffs' claims are typical of the claims of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. The parties opposing the claims have acted or refused to act on grounds generally applicable to the class.

3 5. Sharon Roe and Dorothy Roe are the pseudonyms of real persons, members of the class, adult citizens of the United States of Connecticut and residents of the City of New Haven; they and their families receive benefits under the Aid to Families with Dependent Children (AFDC) by the Connecticut State Welfare Department.

6. Defendant Nicholas Norton, is Commissioner of Welfare of the State of Connecticut, and in said capacity is charged with administering the welfare laws of the State of Connecticut. His claims and defenses which would be available to the selectment of any town and of any guardiano ad litem of children appointed by any court of competent jurisdiction, all persons empowered to act under C.G.S. § 52-440(b).

7. Plaintiffs Sharon Roe and Dorothy Roe are recipients of assistance under the Aid to Families with Dependent Children Program operated by defendant Nicholas Norton. Each has given birth to a child who is not issue of a marriage, and each has been served with a citation prepared by his agent Sheldon Messinger under the authority of C.G.S. § 52-440(b). The Circuit Court has not disposed of said citations to the date hereof.

8. To the date hereof, each named plaintiffs has refused to disclose the name of the putative father of her children, claiming that her right to privacy makes such information privileged.

4 Unless enjoined by this Court from doing so, each of the plaintiffs will be forced to choose between her privacy and being found in contempt of court.

9. If either plaintiff is found in contempt of court, imprisonment for up to one year could follow; in all probability dismemberment of their families and consequent termination of the plaintiffs eligibility under the AFDC program would result.

COUNT I

The allegations of paragraphs 1 through 9 are incorporated herein by reference, the same as though pleaded herein in full.

10. Connecticut General Statutes § 52–440(b) and the regulations issued by the Connecticut State Welfare Department violate plaintiffs right to privacy guaranteed by the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution.

COUNT II

The allegations of paragraphs 1 through 9 are incorporated herein by reference, the same as though pleaded herein in full.

11. The defendant welfare commissioner was enjoined from creating an additional condition of eligibility for Aid to Families with Dependent Children through the use of a requirement that a mother name the putative father of her illegitimate child; *Doe* v. *Shapiro*, 302 F. Supp. 761 (D. Conn. 1969), appeal dismissed, 396 U.S. 488 rehearing denied, 397 U.S. 970 and *Doe* v. *Harder*, 310 F. Supp. 302 (1969).

12. The practices and policies of the Connecticut State Welfare Department pursuant to Section 52–440(b) Connecticut General Statutes violate the following sections of the Social Security Act of 1935 and related regulations in the following specifics:

a. 42 C.F.R. 250.50(a) and 42 U.S.C.A. 602 which protect public assistance recipients from the public disclosure of confidential information.

b. 42 U.S.C.A. 602(a)(9), 42 C.F.R. 206.10(a)(10) which requires that standards and methods for the determination of eligibility "will not result in practices that violate the individual's privacy or personal dignity or harass him."

c. 42 U.S.C.A. 601 and 42 U.S.C.A. 602(a)(14) requiring encouragement of the care of dependent children in their own or relative's homes, to help maintain and strengthen family life, and to continue parental care and protection. *See also*, 42 C.F.R. 220.16 and related sections.

13. The practices and policies of the Connecticut State Welfare Department pursuant to Section 52–440(b) Connecticut General Statutes are not saved by or in compliance with 42 U.S.C.A. 602(a)(17) which requires the development of an agency program to establish paternity and support for AFDC children born out of wedlock since:

a. C.G.S. § 52–440(b) and the regulations issued thereunder do not comply with other provisions of the Social Security Act as detailed paragraph 12 *supra*.

6 b. C.G.S. § 52–440(b) is not part of a general plan which has been submitted for approval under said subsection.

c. The 42 U.S.C.A. 602(a)(17) requirement of a single agency organizational unit responsible for such a plan has not been met.

d. C.G.S. § 52–440(b) threatens to remove the mother from the household in violation of the purposes of Title 42 U.S.C. § 602(a)(17).

COUNT III

The allegations of paragraphs 1 through 9 of the complaint are hereby incorporated by reference, the same as though pleaded in full.

14. C.G.S. § 52–440(b) does not affect mothers or children born out of wedlock unless such persons are recipients of assistance from the State Welfare Department or general assistance.

15. Said statute invades the privacy of persons receiving such assistance, hereby denying them the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

Wherefore: Plaintiffs respectfully pray, on behalf of themselves, their minor children and all others similarly situated, that this court:

1. Assume jurisdiction of this claim, convene a three-judge district court pursuant to Title 28 U.S.C. Section 2281 to determine this controversy and set this case down for a prompt hearing:

7 2. Certify, pursuant to Rule 23 F.R.C.P. that this claim may proceed as a class action;

3. Pending a hearing and determination by a three-judge court, grant temporary relief pursuant to 28 U.S.C. Section 2284(3) restraining defendants, their successors in office, agents and employees and all other persons acting in concert and participation with them from causing irreparable harm to plaintiffs by acting pursuant to Section 52–440(b) Connecticut General Statutes and related policies and practices.

4. Enter preliminary and permanent injunctions, pursuant to Rule 65 F.R.C.P. enjoining the defendant, his successors in in office, agents and employees from causing irreparable harm to plaintiffs by acting pursuant to Section 52–440(b) Connecti-

cut General Statutes and related departmental policies and practices.

5. Enter final judgment declaring Section 52–440(b) of the Connecticut General Statutes and all related state policy and practices invalid under the First, Fourth, Fifth, Ninth and Fourteenth Amendments, the Social Security Act of 1935 and violative of regulations promulgated pursuant to the Social Security Act of 1935.

6. Pursuant to Rule 54(d) F.R.C.P., grant plaintiffs such additional relief, including payment of all monies wrongfully withheld, as this Court may deem just, proper, and equitable.

8 7. Such other and further relief as law and equity may provide.

The Plaintiffs:
(S) FRANK COCHRAN,
795 Grand Avenue,
New Haven, Connecticut 06511
(203)–777–5428.
Their Attorney,

Certification (omitted in printing)

9 EXHIBIT A

Sec. 52–440b. Compelling disclosure of name of putative father and institution of action. (a) If the mother of any child born out of wedlock, or the mother of any child born to any married women during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action

may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

(1971, P.A. 439, S. 4.)

10 EXHIBIT B

(Connecticut State Welfare Department Social Service Policies—Public Assistance: Manual Vol. 1, Effective 8–1–72)

ELIGIBILITY PROVISIONS—CHILD BORN OUT OF WEDLOCK—3460.22

3460.22 RESPONSIBILITY FOR SUPPORT AND ESTABLISHMENT OF PATERNITY

If the mother decides to keep the child or to place him in a relative's home, both parents are responsible for support and proceedings for the establishment of paternity are initiated. Information about the alleged father is obtained from the mother of the child. If he resides in the State, an interview is held to discuss the situation and to secure his Acknowledgement of Paternity.

The mother is encouraged to name the father, by Affirmation of Paternity, under oath and to file a petition to establish paternity and support.

If the mother is unwilling or unable to name the father, she is still eligible for assistance to meet *her own needs, the needs of the child in question, and the needs of any other children in the family*, provided all other eligibility requirements are met; however, if she is *unwilling* to *name the father*, she is informed that she is subject to be cited to appear before any judge of the Circuit Court, be compelled to name the putative father and to institute an action to establish paternity of the child.

In all situations, assistance is granted promptly when all eligibility requirements are met, whether or not Court action is pending to establish paternity or to secure support.

In situations where the mother names the father, but then is unwilling or neglects to file a petition or to pursue a petition she started, the Department, under Section 52–440a of the Connecticut Statutes, institutes such proceeding. In this instance, the mother may be subpoenaed to testify and treated as a hostile witness.

11 2. *Paternity Not Alleged by the Mother*

a. If the mother is unwilling to name the putative father she is informed by the worker that she will be cited to appear before any judge of the Circuit Court and compelled to disclose the name of the putative father and to institute an action to establish the paternity of the child. The worker refers the matter to the Resource worker on a Form W–109. Central Office will provide a list of attorneys to each Resource Unit; referral will be made to an attorney on the list for the purpose of citing the mother to appear before the Court. The fee for this service will be $75 if the mother names the father after the attorney prepares the petition and prior to a court hearing and $150 if the matter goes to a full hearing before the Court. The same fee prevails regardless of the number of children and/or fathers involved. If, after the hearing, the mother decides to cooperate and initiate the paternity action herself, she is of course free to contact an attorney of her own choice. A fee schedule has been established for attorney's fees in connection with paternity proceedings when the mother has named the father (see Index No. 3460.24). If she refuses to cooperate, the Department will initiate a paternity action under the terms of Section 52–440a (see Index No. 3460.1). The same attorney who cited the mother into court will be used to bring the paternity action in such cases.

b. When paternity is established and the Court has determined the amount of support to be paid, payments are made to the Department of Finance and Control and the State Welfare Department meets the continuing needs of the eligible members fully.

c. If the mother is *unable* to name the putative father, this is recorded in the case record.

3. *Referral to the Circuit Court*

When the hospital cost has been paid by the Department, the worker directs a memorandum to the Medical Payments Section, Central Office, requesting a statement of hospital charges.

The worker then forwards the following to the liaison worker of the Resources Unit by means of a Form W–109 for referral to the Circuit Court in which the mother resides:

a. The executed Form W–161, "Acknowledgement of Paternity and Affirmation of Paternity";

12 b. The amount of hospital charges;

c. Form W–326, "Referral to the Family Relations Division of the Circuit Court";

d. The amount of assistance paid for the care of the child in question;

e. Pertinent information regarding the acknowledged father's financial circumstances.

4. *Support Payments*

When paternity is established and the Court has determined the amount of support to be paid, payments are made to the State and the Department meets the continuing need of the eligible members fully.

Effective 8–1–72

13 Filed, February 26, 1973

In the United States District Court for the District of Connecticut

Designation of Judges

Civil No. 15,579

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY, AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANT

Having been notified by the Honorable M. Joseph Blumenfeld, Chief Judge, United States District Court for the District of Connecticut, that an application has been filed in the above matter for relief pursuant to 28 U.S.C. §§ 2281 and 2284, I hereby designate the following judges, in addition to the Honorable M. Joseph Blumenfeld, to hear and determine said cause as provided by law: Honorable William H. Timbers, United States Circuit Judge, United States Court of Appeals for the Second Circuit, and Honorable Jon O. Newman, United States

District Judge, United States District Court for the District of Connecticut.

IT IS HEREBY ORDERED that this order be filed in the above matter in the United States District Court for the District of Connecticut.

/s/ HENRY J. FRIENDLY,
Chief Judge,
United States Court of Appeals, Second Circuit.

New York, N.Y., February 20, 1973.

14 In the United States District Court for the District of Connecticut

Civil No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED

Order for Consolidation

Plaintiffs seek the convening of a three-judge court pursuant to 28 U.S.C. § 2281 in a suit challenging, on constitutional and statutory grounds, the enforcement of Conn. Gen. Stat. § 52–440(b), Public Act 439, 1971. Since a three-judge court has already been convened in *Doe* v. *Norton,* Civ. No. 15,579, to consider the same claims raised by these plaintiffs, this action is hereby ordered consolidated with Civ. No. 15,579, and the application to convene a separate three-judge court for Civ. No. 15,589 is denied as unnecessary as a result of the consolidation.

Dated at New Haven, Connecticut, this 26th day of February, 1973.

(S) JON O. NEWMAN,
United States District Judge.

15 In the United States District Court for the District of Connecticut

Civil No. 15,579

DONNA DOE, ET AL.
v.
NICHOLAS NORTON, INDIVIDUALLY, AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Ruling on Application for a Preliminary Injunction

The plaintiffs,[1] all allegedly eligible to receive public assistance from the Connecticut State Welfare Department, have initiated this suit to challenge the constitutionality of
16 Conn. Gen. Stats. § 52–440b.[2] This statute is part of a comprehensive statutory scheme whereby the mother of any illegitimate child may be compelled by the appropriate authorities to disclose the name of the child's putative father, and to institute a paternity action. Failure to comply with this statute may result in a fine of not more than $200 and/or imprisonment for not more than one year. The defend-

[1] Because of the special circumstances of this case, plaintiffs sue under fictitious names. They are all mothers of illegitimate children who sue on their own behalf as well as on behalf of their minor children.

[2] Conn. Gen. Stats. § 52–440b provides:

"(a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

"(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both."

ant is the Commissioner of Welfare, Nicholas Norton, sued in his individual and representative capacity.

The plaintiffs allege that, as applied to them, this statute violates their constitutional rights to equal protection, due process, and privacy, and is inconsistent with and contravenes the underlying policies of the Social Security Act, 42 U.S.C. §§ 601 et seq. They rely upon the Civil Rights Act, 42 U.S.C. § 1983, for a cause of action, and upon 28 U.S.C. § 1343(3) for this court's jurisdiction. They seek the convocation of a three-judge district court, 28 U.S.C. § 2281; preliminary injunctive relief, 28 U.S.C. § 2284; certification of the suit as a class action, Fed. R. Civ. P. 23; and declaratory and permanent injunctive relief.

17 I

THREE-JUDGE DISTRICT COURT

Because these plaintiffs seek to restrain the operation of a state statute, this case can only be decided by a district court of three judges, 28 U.S.C. § 2281, unless their claim is insubstantial. *Ex parte Poresky*, 290 U.S. 30 (1934). The Supreme Court has recently reiterated the limited power of a district judge to dismiss as insubstantial a claim otherwise appropriate for consideration by three judges:

> A claim is insubstantial only if "its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy." *Goosby* v. *Osser*, 41 U.S.L.W. 4167, 4169 (Jan. 17, 1973) (citations omitted).

There is little doubt that the constitutional claims herein presented are not "insubstantial." [3] Accordingly, a three-judge district court will be convened to adjudicate the merits of this case.

The motion to certify the class action aspect of this case will be reserved for the three-judge district court.

[3] Counsel for defendant Norton does not contest the need for a three-judge district court.

18 II

Preliminary Relief

It does not follow from the determination that the constitutional questions herein presented are not so "insubstantial" as to foreclose the need for a three-judge district court to resolve them that the plaintiffs have demonstrated that they are entitled to preliminary injunctive relief. The standard which informs the exercise of judicial discretion in the award of preliminary relief focuses on different considerations.

Though the defendant contests the propriety of preliminary injunctive relief in this case, the parties do not dispute the applicable standard which controls the proper resolution of this facet of the dispute. In this circuit, it is settled that:

> (t)he purpose of a preliminary injunction is to maintain the status quo pending a final determination of the merits. It is an extraordinary remedy, and will not be granted except upon a clear showing of probable success *and* possible irreparable injury. However, "the burden (of showing probable success) is less where the balance of hardships tips decidedly toward the party requesting the temporary relief." In such a case, the moving party may obtain a preliminary injunction if he has raised questions going to the merits so serious, substantial, and difficult as to make them a fair ground for litigation and thus for more deliberate investigation. *Checker Motors Corp.* v. *Chrysler Corp.*, 405 F. 2d 319, 323 (2d Cir.), *cert. denied*, 394 U.S. 999 (1969).

19 The elements on which the issuance of a temporary injunction depends will be considered separately.

A. Probable Success on the Merits

Since factual issues are minimal, the clear showing which the plaintiffs are required to make is that they will prevail on the issues of law which are presented by this case. In order to determine what they are, it will be helpful to delineate first what is not involved.

Despite the plaintiffs' facile invocation of the constitutional rights to equal protection and due process, it does not appear that the operation of this statute violates those constitutional

rights. Their resort to the fifth amendment's protection against self-incrimination would similarly appear to be of no avail. For any action taken under the statute, immunity from criminal prosecution is granted to both the mother and the putative father for *any* act about which either testifies in such proceedings, or for any statement made with respect to paternity prior to such proceedings. Conn. Gen. Stats. §§ 52–435b, 435c.

Nor are the statutory rights of the plaintiffs to welfare benefits jeopardized by the operation of this statute. A three-judge district court in this district has held that the state may not withhold AFDC benefits to an otherwise qualified child, *Doe* v. *Shapiro*, 302 F. Supp. 761 (D. Conn. 1969), *appeal*
20 *dismissed*, 396 U.S. 488, *rehearing denied*, 397 U.S. 970 (1970), or to his [4] mother, *Doe* v. *Harder*, 310 F. Supp. 302 (D. Conn.), *appeal dismissed*, 399 U.S. 902 (1970), because of a mother's refusal to comply with state regulations [5] requiring her to reveal the name of the child's father or to participate in paternity proceedings against him. That issue is well settled. See cases cited in *Saiz* v. *Hernandez*, 340 F. Supp. 165, 166 (D. N.Mex. 1972). With these threats to the eligibility of the plaintiffs to receive welfare benefits removed from the case, the only discernable interest which remains, and what the plaintiffs singled out in argument at the hearing as having alleged constitutional significance, is founded on the desire of each mother to keep secret the name of her child's father.

That a constitutional right of personal privacy exists
21 is not contested. Recent cases, e.g., *Griswold* v. *Connecticut*, 381 U.S. 479 (1965), demonstrate that

> (although) (t)he Constitution does not explicitly mention any right of privacy . . . (there is) a line of decisions . . . (wherein) the Court has recognized that a right of personal privacy, or a guarantee of certain areas

[4] For convenience, the masculine gender is used to refer to children of either sex.

[5] See Connecticut State Welfare Department Social Service Policies—Public Assistance: Manual Vol. 1, Index No. 3460.22 which presently provides:

"If the mother is unwilling or unable to name the father, she is still eligible for assistance to meet her own needs, the needs of the child in question and the needs of any other children in the family providing all other eligibility requirements are met; . . ."

See also, Welfare Department Memoranda dated April 12, 1972, January 6, 1973, and February 13, 1973, reiterating this policy.

> or zones of privacy, does exist under the Constitution. . . . These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, procreation, contraception, family relationships, and child rearing and education. *Roe* v. *Wade*, 41 U.S.L.W. 4213, 4225 (Jan. 22, 1973) (citations omitted).

What is protected is the individual's personal right to privacy, notwithstanding the fact that by its very nature the exercise of the right may require the participation of another individual. Accordingly in striking down prohibition on the access to the use of contraceptive devices as a denial of equal protection the Court in *Eisenstadt* v. *Baird*, 405 U.S. 438, 453 (1972), noted:

> If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child. (citation omitted).

Thus, the constitutional question presented is whether at this time a mother's desire to keep the name of the child's father secret is so "fundamental" or "implicit in the concept
22 of ordered liberty" as to require constitutional protection. *Roe* v. *Wade*, *supra*, 41 U.S.L.W. at 4225. The contention of each plaintiff mother is that, because her participation in legal action to establish the paternity of her child may result in additional strains in family relationships within the home, or may unwisely force the permanent severance of relationships with his father, her right to decide for herself whether a paternity action should be brought is so "fundamental" as to be included in the constitutional guarantee of personal privacy. This contention calls for further examination.

The rights of a person arising out of a family relationship are necessarily interrelated with those of other members of the family. Whatever interest a mother may have in not disclosing her knowledge of the identity of her child's father is intertwined with, and has a material effect upon, the interests of her child. To discern more accurately the nature of a mother's interest, it will be helpful to distinguish it from those of her child.

Some light is thrown upon the particular interest of the child by the way in which our society considers the plight of a child who has not been acknowledged by his father. Rather than branding it as manifestly evil, a theme which one must be prepared to concede is subject to the influences of changing social trends, the child's relationship to his unnamed
23 father has been imbued with a sense of responsibility. The responsibility of a father to support his child, and a cause of action to enforce that responsibility, have existed in Connecticut from its earliest days.[6] In obtaining support for their children, the plaintiffs do not hesitate to disclose publicly to the state and others that their children are illegitimate. At the same time, they argue that the failure to disclose the name of the father brings strength to the family, although that will shield the father against his obligation to support his own child. There is an inconsistency here in keeping two contradictory ideas in play at the same time.

The legitimate children in the family unit, if any there are, are not disadvantaged, for they still have their father to look to for support. Whatever unique stigmata of suffering may be carried by a child because he has been denied the same charter that the other children in the family take from birth may not be wholly relieved by disclosure of the name of his father; but if paternity is not established, he is subjected to the additional risk that he will be forever deprived of many rights he
24 is qualified to receive, even though an illegitimate child of his father. Except for special situations, e.g., to insure noble lineage and the stability of titles, and the prompt and definitive determination of valid distribution of property left by decedents, *Labine* v. *Vincent*, 401 U.S. 532 (1971), the trend of the law is to separate the label "illegitimate" from the word "child" to prevent their exclusion from benefits to children. E.g., *Weber* v. *Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1971) (workmen's compensation benefits); *Glona* v. *American Guarantee & Liab. Ins. Co.*, 391 U.S. 73 (1968) (wrongful death statute); *Levy* v. *Louisiana*, 391 U.S. 68 (1968) (wrongful death statute); *Davis* v. *Richardson*, 342 F. Supp. 588 (D. Conn.) (3-Judge District Court), *aff'd*, 41 U.S.L.W. 3345 (1972)

[6] In addition to this responsibility, it is not amiss to note that history and literature are replete with examples of the anguish suffered by illegitimate children denied the satisfaction of knowing their parternity. See, e.g., *The Right of Illegitimates Under Federal Statutes*, 76 Harv. L. Rev. 337 (1962). Three bastardy actions are reported in the first volume of Connecticut's Reports. See Vol. 1 of Root's Reports 1789–93.

(social security death benefits); *Ballentine* v. *DeSylva*, 226 F. 2d 623 (9th Cir. 1955) (copyright statute); *Middletown* v. *Luckenbach S.S. Co.*, 70 F. 2d 326 (2d Cir.), *cert denied*, 293 U.S. 577 (1934) (death on the high seas, "children" includes illegitimates); *Turner* v. *Metropolitan Life Ins. Co.*, 56 Cal. App. 2d 862, 133 Pac. 2d 859 (1943) ("children" in life insurance policy includes illegitimate children). In all of the foregoing cases the interest of the father was only tangential to that of his illegitimate child, for the benefit to the child was not at the expense of his father. But in *Gomez* v. *Perez*, 41 U.S.L.W. 4174 (Jan. 17, 1973), where the same interest of the father as in these
25 cases was at stake, the Supreme Court held that it was a denial of equal protection for a state to exclude illegitimate children from the obligation of a father to support his children.

Assuming, arguendo, that the enforced disclosure by the plaintiffs of the names of the fathers of their illegitimate children results in an injury which is irreparable, the foregoing analysis of the relative rights of the members of their families persuades me that they have not made a sufficiently clear showing of probable success on the merits as to warrant preliminary injunctive relief under the traditional standard. However, since they have "raised questions going to the merits so serious, substantial, and difficult as to make them a fair ground for litigation . . .," I turn next to consider whether the balance of hardships tips so decidedly toward them as nonetheless to warrant the extraordinary relief of a preliminary injunction. *Checker Motors Corp.* v. *Chrysler Corp.*, *supra*, 405 F. 2d at 323.

B. BALANCE OF HARDSHIPS

In balancing the hardships, it must be remembered that

> (t)he requirement that a party seeking a preliminary injunction demonstrate that it will suffer irreparable harm in the absence of preliminary relief necessitates more than a mere showing that the party seeking
> 26 relief will see its relative position deteriorate. Preliminary injunctive relief is extraordinary relief. It requires a convincing demonstration that the balance of hardships tips decidedly toward the moving party. *Sanders* v. *Air Line Pilots Assoc. Int'l*, Dkt. No. 72-1878 (2d Cir., Dec. 4, 1972), slip op. at 715, 722 (citations omitted).

Normally the court is called upon to balance the harm which a plaintiff will suffer if an injunction is not granted against the harm that a defendant will sustain if it is. More is involved here. There are special circumstances in this case which make a great difference in considering hardships. As already indicated, the "right of privacy" is invoked by the plaintiff mothers to protect their desire to keep secret the name of their children's father lest its disclosure have some adverse effect upon future relationships within the home. Not every one will agree on what are good amenities and conduct in such a situation. But if the family is to be taken into account, and it must be, hardship to the child cannot be left out of consideration.

As noted above, these children stand to reap significant benefits if paternity is established.

When the effect of the continued denial of the right to substantial benefits accorded to children generally is balanced against the effect which disclosure of the name of a child's father will have on any future relationships with him, the hardships fall more heavily on the child than on his
27 mother.

Another factor militating against the grant of a preliminary injunction is the presence of a statute of limitations which provides that a paternity suit must be brought within three years from the date of the child's birth.[7] Once the third birthday of a child has passed without action, the name of his father may never be disclosed to him. Even if it is disclosed thereafter, years may go by before there is an opportunity to make a claim to a benefit derived through his father, and the more stale such a claim is the more difficult it will be to prove it. The problems with respect to proof of paternity are formidable in any case.

For the foregoing reasons, the application for a preliminary injunction is denied. However, the court, as soon as it is designated, will expedite a hearing on the merits.

SO ORDERED.

Dated at Hartford, Connecticut, this 27th day of February, 1973.

(S) M. JOSEPH BLUMENFELD,
Chief Judge.

[7] The plaintiffs suggest that a temporary injunction by this court would effectively toll the state's statute of limitations, but they have not furnished the court with any authority to support that proposition.

28 In the United States District Court for the District of Connecticut

Civil No. 15,579

DONNA DOE, ET AL., ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANT

Civil No. 15,589

SHARON ROE, ET AL., ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED, DEFENDANT

Substitute Complaint—Filed March 9, 1973

1. This is an action for declaratory and injunctive relief authorized by Title 42 U.S.C. § 1983, to redress the deprivation of rights privileges and immunities secured to the plain-
29 tiffs and all others similarly situated, by Section 1 of the Fourteenth Amendment, the First Amendment, the Fourth Amendment, the Eighth Amendment and the Ninth Amendment, all of the United States Constitution, and the Social Security Act, Title 42 U.S.C. § 1352 *et seq.*, and regulations promulgated thereunder.

2. Jurisdiction is conferred on this Court by Title 28 U.S.C. § 1331 and § 1343.

3. This is a proper case for determination by a three-judge court pursuant to Title 28 U.S.C. § 2281 and § 2284, in that it seeks an injunction and declaratory judgment to restrain the defendants from applying, enforcing and implementing Connecticut General Statutes § 52-440(b) (1971 Public Act 439), on the grounds that said statute violates the right of privacy of the class of plaintiffs, and denies them equal protection of the laws, and constitutes a cruel and unusual punishment. Copies

of said statute and regulations issued thereunder are attached hereto and incorporated herein as Exhibit A.

4. The named plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves, their minor children, and all others similarly situated. A person is similarly situated if she is the mother of any child born out of wedlock or the mother of any child born to any married woman during marriage, which child shall be found not to be issue of the marriage by any court of competent jurisdiction.

The persons in the class are so numerous as to make joinder impracticable; there are common questions of law and fact; plaintiffs' claims are typical of the claims of the class;
30 and the representative plaintiffs will fairly and adequately protect the interests of the class. The parties opposing the class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

5. a. The plaintiffs, Donna Doe, Linda Loe, Rena Roe, Sally Smith, Sharon Roe and Dorothy Poe and their children are all eligible to receive public assistance benefits from the Connecticut State Welfare Department.

b. Plaintiff Donna Doe and the subclass of persons she represents have been refused or have been threatened with refusal of public assistance for failure to comply with Section 52–440(b) of the Connecticut General Statutes.

c. The dependent children of plaintiffs Linda Loe, Rena Roe, Sally Smith, Sharon Roe and Dorothy Poe, are in danger of having their parental care eliminated by the welfare department by virtue of a court citation subjecting their mothers to a maximum penalty of one year's imprisonment under Section 52–440(b) of the Connecticut General Statutes.

d. Each plaintiff is a resident of the State of Connecticut.

e. The plaintiffs' Affidavits, attached to the Complaint as Exhibits B, C, D, and E and incorporated herein by reference as if they were fully pleaded, detail their individual factual situations and the effects of the defendant's policies upon them.

31 6. Defendant Nicholas Norton, is Commissioner of Welfare of the State of Connecticut, and in said capacity is charged with administering the welfare laws of the

State of Connecticut. His claims and defenses which would be available to the selectmen of any town and of any guardian ad litem of children appointed by any court of competent jurisdiction, the class of persons empowered to act under C.G.S. § 52–440(b).

7. Plaintiffs Sharon Roe and Dorothy Poe are recipients of assistance under the Aid to Families with Dependent Children Program operated by defendant Nicholas Norton. Each has given birth to a child who is not issue of a marriage, and each has been served with a citation prepared by his agent Sheldon Messinger under the authority of C.G.S. § 52–440(b). The Circuit Court has not disposed of said citations to the date hereof.

8. The defendant welfare commissioner, through private counsel retained by the welfare department, has notified Linda Loe and Rena Roe that they will be subjected to court citation which would make them vulnerable to possible imprisonment and fine for their failure to name their children's putative father. (See the department's notifications to the mothers. Exhibits F and G.)

9. To the date hereof, each of said named plaintiffs has refused to disclose the name of the putative father of her child, claiming it is in the best interests of both mother and child not to make the disclosure. Unless enjoined by this Court from doing so, each of the plaintiffs will be forced to choose between doing what she feels in the best interests of the family and being found in contempt of court.

32 10. The defendant welfare commissioner, through private counsel retained by the welfare department, has notified Sally Smith that she will be subjected to court citation and possible imprisonment for her failure to sign an acknowledgement of paternity form with the previously divulged name of her child's putative father. (See department's notification. Exhibit I.)

11. If any of these named plaintiffs is found in contempt of court, imprisonment for up to one year could follow; in all probability dismemberment of their families and consequent termination of the plaintiffs eligibility under the AFDC program would result.

COUNT I

The allegations of paragraphs 1 through 11 are incorporated herein by reference, the same as though pleaded herein in full.

12. In the event that plaintiffs Linda Loe, Rena Roe, Sally Smith, Sharon Roe and Dorothy Poe are compelled to testify in the Circuit Court, each of them may be asked any and all details of her sexual conduct, may be questioned about her relationship with the putative father, may be forced to institute a paternity action or to testify in such an action brought by the Commissioner of Welfare; all of said possibilities being public record.

13. Connecticut General Statutes § 52–440(b) and the regulations issued under it remove members of the plaintiff class from the position of determining the best interests of
33 their children without requiring as a precondition, an individual due process hearing and finding that the child's interests are being neglected by the plaintiffs.

14. Connecticut General Statutes § 52–440(b) is not restricted in application to those cases in which it may be possible subsequently to bring a paternity action.

15. Connecticut General Statutes § 52–440(b) and the regulations issued by the Connecticut State Welfare Department violate plaintiffs right to privacy guaranteed by the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution.

COUNT II

The allegations of paragraphs 1 through 14 are incorporated herein by reference, the same as though pleaded herein in full.

16. Connecticut General Statutes § 52–440(b) and the regulations issued by the Connecticut State Welfare Department constitute a cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment.

COUNT III

The allegations of paragraphs 1 through 11 are incorporated herein by reference, the same as though pleaded herein in full.

17. The practices and policies of the Connecticut State Welfare Department pursuant to Section 52–440(b) Connecticut General Statutes violate the Social Security Act of 1935 and related regulations in the following specifics:

a. 42 C.F.R. 250.50(a) and 42 U.S.C.A. 602 which protect public assistance recipients from the public disclosure of confidential information.

34 b. 42 U.S.C.A. 602(a)(9), 42 C.F.R. 206.10(a)(10) which requires that standards and methods for the determination of eligibility "will not result in practices that violate the individual's privacy or personal dignity or harass him."

c. 42 U.S.C.A. 601 and 42 U.S.C.A. 602(a)(14) requiring encouragement of the care of dependent children in their own or relative's homes, to help maintain and strengthen family life, and to continue parental care and protection. See also, 42 C.F.R. 220.16 and related sections.

d. The department is creating an additional condition of eligibility for mothers of dependent children who refuse to name putative fathers.

e. The 42 U.S.C.A. 602(a)(17) requirement of a single agency organizational unit responsible for such a plan has not been met.

f. C.G.S. § 52–440(b) threatens to remove the mother from the household inviolation of the purposes of Title 42 U.S.C. § 60.

COUNT IV

The allegations of paragraphs 1 through 11 are hereby incorporated by reference, the same as though pleaded herein in full.

18. C.G.S. § 52–440(b) has not been applied to and was not intended to apply to mothers of children born out of wedlock unless such persons are recipients of assistance from the State Welfare Department or general assistance.

35 19. Said statute invades the privacy of persons receiving such assistance, hereby denying them the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

COUNT V

The allegations of paragraphs 1 through 11 are hereby incorporated by reference the same as though pleaded herein in full.

20. C.G.S. § 52–440b creates an irrebutable presumption that failure or refusal of a plaintiff mother to disclose the identity of her child's father is not in the best interests of the child, when in fact such disclosure may or may not be in the child's best interest. Said presumption violates the Due Process clause of the Fourteenth Amendment to the United States Constitution.

36 WHEREFORE:

Plaintiffs respectfully pray, on behalf of themselves, their minor children an all others similarly situated, that this court:

1. Assume jurisdiction of this claim, convene a three-judge district court pursuant to Title 28 U.S.C. Section 2281 to determine this controversy and set this case down for a prompt hearing:

2. Certify, pursuant to Rule 23 F.R.C.P. that this claim may proceed as a class action;

3. Pending a hearing and determination by a three-judge court, grant temporary relief pursuant to 28 U.S.C. Section 2284(3) restraining defendants, their successors in office, agents and employees and all other persons acting in concert and participation with them from causing irreparable harm to plaintiffs by acting pursuant to Section 52–440(b) Connecticut General Statutes and related policies and practices.

4. Enter preliminary and permanent injunctions, pursuant to Rule 65 F.R.C.P. enjoining the defendant, his successors in office, agents and employees from causing irreparable harm to plaintiffs by acting pursuant to Section 52–440(b) Connecticut General Statutes and related departmental policies and practices.

5. Enter final judgment declaring Section 52–440(b) of the Connecticut General Statutes and all related state policy and practices invalid under the First, Fourth, Fifth, Ninth and Fourteenth Amendments, the Social Security Act of 1935 and violative or regulations promulgated pursuant to the Social Security Act of 1935.

37 6. Pursuant to Rule 54(d) F.R.C.P., grant plaintiffs such additional relief, including payment of all moneys wrongfully withheld, as this court may deem just, proper, and equitable.

7. Such other and further relief as law and equity may provide.

The Plaintiffs:

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Their Attorneys.

38 In the United States District Court for the District of Connecticut

Civil Action No. 15,579

DOE, ET AL., PLAINTIFFS

v.

NORTON, DEFENDANT

Civil Action No. 15,589

ROE, ET AL., PLAINTIFFS

v.

NORTON, DEFENDANT

Incorporation of Exhibits—Filed Mar. 9, 1973

1. Exhibit A to this Substitute Complaint consists of the materials Exhibits A and B to the Complaint in *Roe* v. *Norton*, which are hereby incorporated by reference the same as though attached hereto.

2. Exhibits B, C, D, and E to this Substitute Complaint consists of the materials with those designations to the complaint

in *Doe* v. *Norton*, which are hereby incorporated by reference the same as though attached hereto.

Plaintiffs:
By FRANK COCHRAN,
DOUGLAS CROCKETT,
RAYMOND KELLY,
ROBERT BECKMAN,
Their Attorneys

39 Certification (omitted in printing).

40 UNITED STATES DISTRICT COURT,
DISTRICT OF CONNECTICUT,
CHAMBERS OF JUDGE JON O. NEWMAN,
Hartford, Conn., March 12, 1973.

Re Donna Doe, et al v. Nicholas Norton, etc. Civil No. 15,579.
Sharon Roe, et al v. Nicholas Norton, etc. Civil No. 15,589

DAVID ROSEN, ESQ.
AND EDWARD DOLAN, ESQ.
265 Church Street,
New Haven, Conn.

DEAR SIRS: I understand that you are willing to serve as counsel for the children in the above-captioned three-judge court cases. Enclosed please find copies of the Court's files.

The Court appreciates your willingness to serve as counsel, and this letter is your appointment as such.

Sincerely,

JON O. NEWMAN,
United States District Judge.

41 In the United States District Court for the District of Connecticut

Civil Action No. 15,579; April 10, 1973

DONNA DOE, ET AL, PLAINTIFFS

v.

NICHOLAS NORTON, DEFENDANT

Notice of Filing of Affidavits as Evidence

Pursuant to the agreement reached by counsel for all parties in this action at the pre-trial conference presided over by Judge

Blumenfeld on March 12, 1973, plaintiffs are filing as evidence affidavits of plaintiffs and others similarly situated. For convenience, attached to the affidavits is a *Summary* and *Categorization* to relate the lengthy affidavits to the legal issues in this action.

43 In the United States District Court for the District of Connecticut

Civil Action No. 15,579; April 13, 1973

DONNA DOE, ET AL, PLAINTIFFS

v.

NICHOLAS NORTON, DEFENDANT

Summary of Affidavits

I. B:

1. No explanation by Welfare Department of her child's legal paternal rights.
2. No contact with father since mother became pregnant.
3. She feels that any further contact with the father would be detrimental to her child and to her.

II. RENA ROE:

1. No explanation by Welfare Department of her child's legal paternal rights.
2. Father has made verbal threats of physical harm to mother if she divulges his name.
3. No interest was shown in the child by the father who denied paternity.

44 4. Mother has plans for a future marriage and the adoption of the child by her intended husband.

III. LINDA LOE:

1. Her two illegitimate children were born over three years ago.
2. She was divorced more than three years ago.
3. No paternal support or paternal acknowledgement.
4. No explanation by Welfare Department of children's legal paternal rights.

IV. A:

1. One year old illegitimate child.

2. A is now planning to marry putative father and she feels that Section 52–440b legal action could destroy the possibility of marriage.

3. A has written acknowledgement of paternity and is in the process of having the child's name changed to that of the father.

4. No explanation to A by Welfare Department of her child's legal paternal rights.

V. MARY BROWN:

1. No explanation by Welfare Department of her child's legal paternal rights.

2. Planning to marry man who is not the putative father but whom most believe to be the father.

45 4. Written acknowledgement of paternity by putative father.

VI. MILDRED WALTER:

1. Gave name of putative father to Welfare Department.

2. Fears putative father because of prior beatings and physical abuse. The father was arrested and plead guilty to assault against her. Afraid to place her own life and that of the child in danger by signing a paternity petition.

3. She has no objection to Welfare Department initiation of paternity action against putative father.

4. She has received four Welfare Department letters indicating her welfare benefits will be terminated if she does not sign a paternity petition.

VII. M:

1. Six month old illegitimate daughter.

2. M plans to marry the putative father.

3. Fears that paternity action will destroy possibility of marriage.

4. No explanation to M by Welfare Department of her child's paternal benefits.

VIII. DONNA DOE:

1. Seventeen month old illegitimate child and two other legitimate children.

46 2. November, 1972, Doe's application for AFDC was denied for failure to disclose putative father but since

the initiation of this action she has been declared eligible for welfare benefits.

3. No explanation from Welfare Department of her child's paternal legal rights.

4. Stability of family from non-disclosure because:

a. Doe and children are devout members of Seventh Day Adventist Church.

b. Strong emphasis of church on family participation in Sabbath programs and services.

c. Weekly attendance by Doe and family—mutual family happiness and strength.

6. Putative father is Roman Catholic and opposes religious training that his child is now receiving and has expressed his feelings on matter to Doe.

7. Disclosure will jeopardize church membership—one of church's prohibitions is premartial sexual intercourse. Violation is ground for disfellowship. Only a few church elders know real situation—rest of Congregation is ignorant of the facts.

IX. FRANCES FOE:

1. Does not know father but knows that her child is the result of either an incestuous union or one with a mentally unstable individual whose whereabouts are unknown to her.

47 2. No explanation by Welfare Department of her child's legal paternal rights.

X. SALLY SMITH:

1. She has divulged the putative father's name to the Welfare Department.

2. Birth certificate signed by father and child bears his name.

3. Child supported by father and only receives Title XIX *not* AFDC.

4. Welfare Department wants her to sign paternity petition.

XI. DOROTHY POE:

1. Because she is undergoing psychiatric treatment and has a possible heart condition she does not feel it is in her best interest or her child's to expose herself to the additional stress of testifying in court.

2. No explanation by Welfare Department of her child's legal paternal rights.

XII. C:

1. She has told the welfare department that the father is one of three men. She has never refused to divulge those names to the department, but rather offered to submit all three names to the Welfare Department after the birth of her child.

48 2. She has received a citation to appear in Circuit Court and a continuance was obtained until April 28, 1973.

3. The Welfare Department explained the potential social security benefits her child might be able to obtain if paternity was established.

XIII. SHARON ROE:

1. She has received a citation to appear in Circuit Court but the matter is still pending.

2. She refuses to disclose the name of the child's father because of her right to sexual privacy, and the putative father has threatened to leave the state and thus sever the relationship with their daughter if his name is disclosed.

XIV. D:

1. No explanation by the Welfare Department of her child's potential legal paternal rights.

2. D's illegitimate child is over 4 years old.

3. D worked a third shift to enable her to support and care for her child until her failing health prevented her from continuing to work.

4. The three year statute of limitations on paternity actions has passed.

5. D feels disclosure of the father's name would invade her privacy, interfere with her relationship with her daughter, and serve no useful purpose.

49 *XV. KATHERINE LOPES:*

1. Was forced by the welfare department to initiate a paternity action.

2. The paternity trial was a humiliating experience which forced her to publicly disclose details of her private sexual and personal life.

552-950—74——3

50 In the United States District Court
for the
District of Connecticut

Civil Action No. 15,579; April 13, 1973

DONNA DOE, ET AL., PLAINTIFFS

v

NICHOLAS NORTON, DEFENDANT

Affidavit Categorization

I. The illegitimate child will not lose potential monetary rights from the putative father if a paternity action in the mother's name is not initiated.

A. The paternity action statute of limitations has run.

1. III
2. XIV

B. The mother had a written acknowledgment of paternity from father.

1. IV*
2. V*
3. X*

51 C. The mother has divulged or had offered to divulge the putative father's name to the welfare department. The welfare department is able to bring a paternity action in its own name.

1. VI*
2. X*
3. XII

D. The putative father's name is unknown to the mother.

1. IX*
2. XII*

II. The mother has made a decision based on reasonable grounds that divulging the putative father's name to the welfare department or initiating a paternity action in her own name will not be in her child's best interests.

A. Mother fears physical retaliation from the father.

1. II*
2. VI*

*The asterisk denotes the affidavit falls into more than one of categorizations I and II.

B. Future contact with father or public disclosure of status of illegitimacy would be detrimental to both mother and child.

1. I (father has never contacted mother since pregnancy)

52 2. VIII (public knowledge of illegitimacy could cause excommunication)

3. XI (mother's psychiatric and possible heart condition preclude paternity trial)

4. IX* (father a close relative or mentally unstable)

5. XIII (paternity action could destroy father-daughter relationship)

C. The mother intends to marry the father and believes that a paternity action would jeopardize the child's chances and her chances for a warm and permanent relationship with the father.

1. VII
2. IV*

D. The mother intends to marry shortly and her husband would adopt the illegitimate child. A paternity action would jeopardize the chances for this arrangement.

1. V*
2. II*

III. No explanation of child's potential paternal legal rights.

1. I
2. II
3. III
4. IV
5. V

53 6. VII

7. VIII
8. IX
9. XI
10. XIV

IV. Explanation of child's possible potential social security benefits.

1. XII

Plaintiffs,

By DOUGLAS M. CROCKETT,
Their Attorney.

See footnote p. 34.

54 I

AFFIDAVIT

WILLIMANTIC, *March 12, 1973.*

STATE OF CONNECTICUT,
County of Windham, ss:

B and her child reside in West Willington: Connecticut, and are currently receiving AFDC benefits from the Connecticut State Welfare Department. B received a letter dated December 7, 1972, from an attorney retained by the Welfare Department which stated that legal action would be instituted against her if she failed to disclose the name of her child's father.

No welfare department representative, employee, or attorney has ever explained to B that her child could obtain benefits from her putative father if paternity was established other than her social worker who informed B seventeen months ago that she would be entitled to receive support payments for her child. However, the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined support and other potential benefits was explained to her in detail.

B has a verbal acknowledgement of paternity by her child's putative father. In light of this verbal acknowledgement of paternity, B feels it is in her child's best interest not to name the father and initiate a paternity action at this time.
55 She has had no contact with her child's putative father since she became pregnant and feels that any future contact would be severely detrimental to both herself and her child.

The individual referred to as B has personally appeared before me, this day March 12, 1973, and under oath, has sworn to the accuracy of the above statement.

DOUGLAS M. CROCKETT,
Commissioner of Superior Court.

56 II

AFFIDAVIT

WILLIMANTIC, *March 12, 1973.*

STATE OF CONNECTICUT,
County of Windham, ss:

RENA ROE and her illegitimate child reside in Willimantic, Connecticut, and are currently receiving AFDC benefits from the Connecticut Welfare Department. On December 7, 1972, RENA ROE received a letter from an attorney retained by the welfare department which stated that § 52–4406 legal action would commence if she failed to disclose the name of her child's father.

No welfare department representative, employee, or attorney has ever explained to RENA ROE that her child could obtain benefits from his putative father if paternity was established. However, the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined these potential benefits was explained to her in detail.

RENA ROE feels it is in her child's best interest that she and her child do not have any further contact with the father. The father has threatened RENA ROE with physical harm if she divulges his name. He has never shown any interest in his child and has consistently denied fathering the child. The
57 chances for financial recovery from the father are minimal since he works irregularly.

RENA ROE hopes to marry at some time in the future and she hopes her husband would adopt the child. She feels it is in her child's best interest to minimize any contact with the child's father. The father's character is such that he would be a detrimental influence on his child and on the mother/child relationship.

The individual referred to as RENA ROE has personally appeared before me and, under oath, has sworn to the accuracy of the above statement.

By DOUGLAS M. CROCKETT.

58 III

AFFIDAVIT

STAMFORD, *March 12, 1973.*

STATE OF CONNECTICUT,
County of Fairfield, ss:

LINDA LOE, a plaintiff in this action whose real name and identity are known to me, appeared before me and swore to the truth of the following statements:

1. That she and her two children reside in Stamford, Connecticut, and are currently receiving AFDC benefits from the Connecticut Welfare Department.

2. That her children were born more than three years ago, and are not the children of her former spouse from whom she was divorced more than three years ago.

3. That there has been no paternal support, or acknowledgement of paternity of her children.

4. That there has been no institution of any action to establish the paternity of her children.

5. That on December 4, 1972, an attorney retained by the Connecticut Welfare Department sent her a letter stating that he would commence legal action if she failed to disclose the name of the father of her children.

6. That no representative, employee or attorney of the Connecticut Welfare Department has ever explained to her what benefits her children could obtain if their paternity were established, but that her counsel has fully explained to her
59 such benefits as outlined in the *Doe* v. *Norton* Ruling on Application for Preliminary Injunction.

7. That after full consideration of the possible potential benefits to her children, the reasons she had previously chosen not to disclose the name of the father of her children, and the fact that actions may no longer be commenced to establish the paternity of her children because they are over three years of age, she believes it is in the best interests of her children that she not disclose the name of the father of her children at this time.

ROBERT C. BECKMAN,
Commissioner of the Superior Court.

60 IV

AFFIDAVIT

WILLIMANTIC, *March 12, 1973.*

STATE OF CONNECTICUT,
County of Windham, ss:

A and her one year old illegitimate child reside with A's mother in Willimantic, Connecticut, and are currently receiving AFDC benefits from the Connecticut Welfare Department. On November 17, 1972, she received a letter from an attorney retained by the Welfare Department that Section 52–440b legal action would commence if she failed to disclose the name of her child's father.

A and the child's father are planning to marry. She is afraid that if she discloses his name, subsequent legal action could jeopardize their relationship and the possibility of marriage.

A has obtained a written acknowledgement of paternity from the father and is in the process of obtaining an application to have her child's last name changed to the father's last name.

No welfare department official has ever explained to A that her child could obtain benefits from his putative father if paternity was established. However, the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined
61 these potential benefits was explained to her in detail.

In light of her possible marriage and the possible change of her child's last name, and the written acknowledgement of paternity, she feels that it is not in her child's best interest to name the father to the Welfare Department.

The individual referred to as A has personally appeared before me, and, under oath, has sworn to the accuracy of the above statment.

DOUGLAS M. CROCKETT,
Commissioner of Superior Court.

62 V

AFFIDAVIT

WILLIMANTIC, *March 12, 1973.*

STATE OF CONNECTICUT,
County of Windham, ss:

MARY BROWN and her child reside in Willimantic, Connecticut, and are currently receiving AFDC benefits from the Connecticut Welfare Department. On February 9, 1973, MARY BROWN received a letter from an attorney retained by the welfare department which stated that legal action would commence if she failed to disclose the name of her child's father.

MARY BROWN is planning to marry a man who is not the father of her illegitimate child. Most people believe that this man is in fact the father of the child. MARY BROWN believes that after the marriage her husband will adopt the child.

No welfare department representative, employee, or attorney has ever explained to MARY BROWN that her child could obtain benefits from his putative if paternity was established. However, the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined these potential benefits was explained to her in detail.

MARY BROWN has an acknowledgement of paternity in writing by her child's putative father.

63 In light of her possible marriage and her child's possible adoption and the written acknowledgement of paternity, MARY BROWN feels it is in her child's best interest not to name the father and initiate a paternity action at this time.

The individual referred to as MARY BROWN has personally appeared before me and, under oath, has sworn to the accuracy of the above statement.

DOUGLAS M. CROCKETT,
Commissioner of Superior Court.

64 VI

AFFIDAVIT

FEBRUARY 23, 1973.

STATE OF CONNECTICUT,
County of Tolland, Rockville, ss:

I, Mildred Walter being first duly sworn according to law, hereby depose, swear and say:

1. That I live at 66 Union Street in Rockville and receive welfare assistance under the AFDC program for myself and my minor daughter Tammy Jean Walter.

2. That I have given the name of the father of my child to the Welfare Department, so they can institute paternity and support proceedings against him.

3. That due to the violent nature of Tammy's father, I have refused to start paternity proceedings against him but have supplied the Welfare Department with all the information about this man.

4. That during the months of January and February 1973, I have received four letters from the Manchester office of the State Welfare Department informing me that unless I agreed to sign paternity papers and testify in court proceedings brought against the father of Tammy, they would cut off my welfare checks immediately.

5. I have tried to cooperate in any way possible with the Welfare Department concerning this matter, but I cannot testify or sign papers that may place my life and that of my child in danger.

65

6. My fear of this man is due to the beatings and physical abuse he inflicted on me when he was in Rockville.

7. On one occasion, in January 1972, the father of Tammy, dragged me by the hair and kicked me down Union Street in Rockville when I was 9 months pregnant.

8. He was arrested by the Rockville police charged with assault, plead guilty and placed on two years probation for those acts against me.

9. Because of incidents like this which also occurred on other occasions in 1972, I am deathly afraid of this man and do not wish to be involved in any situation with him because of his explosive temper.

10. I do not feel the Welfare Department should place these unreasonable and distressing demands upon me where they have the father's name and address in their files.

MILDRED WALTER.

Subscribed to and sworn before me this 23rd day of February 1973.

RAYMOND J. KELLY,
Commissioner of Superior Court.

66 VII

AFFIDAVIT

ROCKVILLE, *March 20, 1973.*

STATE OF CONNECTICUT,
County of Tolland:

M and her six month old daughter reside in Manchester, Connecticut and are currently receiving AFDC benefits from the Connecticut Welfare Department. On February 1st, 1973, she received a letter from an attorney retained by the Welfare Department that told her she would be cited into Circuit Court to name the putative father of her child if she failed to disclose his name.

The father of the child recently served seven months of a years sentence in Seyms Street jail for criminal non support. He has served time in jail for non support on two other occasions. Since his release from jail the father of the child has contacted an attorney to begin divorce proceedings against his present wife.

M and the putative father plan to marry as soon as he is divorced from his present wife. M is afraid that if she discloses his name, subsequent legal action could jeopardize their relationship and the possibility of marriage. If the putative father's present wife learns of this paternity action, she will attempt to frustrate any divorce action started by the putative father. M has an oral acknowledgment of paternity from the father.

Although M has been contacted by welfare workers to name the putative father of her child, no welfare department
67 official, or employee has ever explained to M that her child could obtain benefits from her putative father if paternity was established. However the *Doe* v. *Norton* ruling on Application for a Preliminary Injuction which outlined these potential benefits, were explained to her in detail.

In light of her possible marriage, and the pending divorce action of the putative father M feels it is in her childs best interest not to name the father and initiate a paternity action at this time.

The individual referred to as M has personally appeared before me and under oath, has sworn to the accuracy of the above statement.

RAYMOND J. KELLY,
Commissioner of the Superior Court.

68 VIII

AFFIDAVIT

ROCKVILLE, *March 19, 1973.*

STATE OF CONNECTICUT,
County of Tolland, ss:

Donna Doe and her 17 month old illegitimate child reside in Manchester with her two other children by a previous marriage. She is currently receiving AFDC benefits from the Connecticut Welfare Department for her entire family. On November 3, 1972 Donna Doe's application for welfare benefits was denied for failure to name the youngest child's putative father pursuant to Section 52–440b of the Connecticut General Statutes. Since that time the State Welfare Department has acknowledged its error in refusing Donna Doe benefits (see Defendant's affidavit of Nicholas Norton Welfare Commissioner February 5th 1973) and has placed her entire family on assistance. Since being placed on AFDC, plaintiff Donna Doe has been contacted by her caseworker to name the father of her youngest son, or she will be compelled to name the father in Court pursuant to 52–440b Connecticut General Statutes.

No welfare department representative, employee or attorney has ever explained to her that her child could obtain benefits from his putative father if paternity was established. However the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined support and other potential benefits was explained to her in detail.

69 Donna Doe has a verbal acknowledgement by her youngest child's putative father. Despite this verbal acknowledgement she feels her child's best interest and the stability of her family would be best served by non-disclosure for the following reasons:

Donna Doe and her children are practising members of the Seventh Day Adventist Church. She and her family attend religious exercises, community discussion groups, recreation and games for the children of Church members. Strong emphasis is placed by the Church on family participation in Sabbath programs and services. Weekly attendance by Plaintiff Doe and her three children at these services has provided an atmosphere of mutual family happiness and strength for them. Donna Doe feels the religious experience and emphasis on family participation that the Adventist Church encourages has been a strengthening factor in her relationship with her children. Her two older boys presently attend an Adventist school.

The putative father of Donna Doe's youngest child is a Roman Catholic. He is very opposed to the religious training that is being provided to the youngest Doe boy. He would rather the child be raised a Roman Catholic. He has made his feelings on this matter of religious up bringing made very clear to Donna Doe.

It is because of the putative father's opposition to the religious training being given the youngest Doe child that Donna Doe does not wish to identify him.

70 Donna Doe is also concerned that the public disclosure of the illegitimacy of her youngest child will jeopardize their church membership. It has been explained to her by her Pastor that an illegitimate child reflects poorly on the moral character of the mother in the eyes of the Church. The Seventh Day Adventist Church does not permit premarital sex, smoking or drinking. Violation of these rules are grounds for "disfellowship" i.e. excommunication or expulsion from Church membership and services. Donna Doe fears that being com-

pelled to name the putative father will result in possible "disfellowship" from her Church, or at the very least injure her standing and reputation within the Church community. At the present time only a few Church elders know of her situation. All other Church members assume her three children are issue of her previous marriage.

In view of the difficulties that naming the putative father would present to continued Church membership for Donna Doe and her family she feels it is in their best interest not to name the father of her youngest child. Disclosure of his identity could only lead to disruption of the family and Church life that have provided such strength and stability to them. The putative father's expressed desire to raise the youngest child in another religion presents a source of disruption and anxiety to the entire family. It is Donna Doe's firm belief that compliance with 52–440b will produce more harm than good to her youngest boy and the rest of her children.

71 The individual referred to as Donna Doe has personally appeared before me and under oath, has sworn to the accuracy of the above statement.

By RAYMOND J. KELLY.

72 IX

AFFIDAVIT

MARCH 22, 1973.

STATE OF CONNECTICUT,
County of New London, ss, Norwich, Ct.

FRANCES FOE, whose real name and identity are known to me appeared before me and swore to the truth of the following statements:

1. That she and her minor child reside in Norwich, Connecticut and are recipients of Aid to Families with Dependent Children Program of the Welfare Department of the State of Connecticut.

2. That she was advised by her caseworker that she had to name the father of her child in order to receive welfare benefits.

3. That she has chosen not to give information regarding the paternity of the child because:

(a) she is uncertain as to who the true father of the child is.

(b) that the child was conceived either under incestuous conditions or by a person who is emotionally unstable and whose whereabouts are unknown to her.

(c) that neither of the persons involved are aware that conceivement took place as she left the area unaware that she had become pregnant.

(d) that she chooses not to make the existence of her child known to either party and desires to complete her high school education and assume full financial responsibility of her child through gainful employment.

73 4. That her caseworker did not explain the benefits the child may some day be eligible for under the Social Security Act if paternity was established.

5. That I explained said rights of the child to said recipient and she continued to choose not to name the father of the child for reasons set forth in paragraph three section (d) on page one of this affidavit.

PATRICIA PAQUETTE,
Notary Public.

74 X

AFFIDAVIT

I, SALLY SMITH, being duly sworn depose and say:

1. On or about December 8, 1972 I received a letter from Attorney Francis Foley, III of 22 Shetucket Street, Norwich, Connecticut advising me to make an appointment with his office for the purpose of ascertaining the name of the father of my child.

2. On December 19, 1972 I appeared in Mr. Foley's office to be advised of my legal rights in that regard as per the implication of his letter to me dated December 7, 1972.

3. On December 19, 1972 Mr. Foley advised me that if I did not sign "Acknowledgement of Paternity" papers which were available in his office that I would be brought to Court and made to sign the papers in the Court and answer under oath as to the name of the father of my child.

4. I indicated to Mr. Foley that I had previously named the father of my child in question to the State Welfare Department and that the father signed the birth certificate at the hospial.

5. Mr. Foley then checked his file and confirmed that the child carried its father's legal name in the records made available to him by the Department of Welfare.

6. I further advised Mr. Foley that the child in mention is not a recipient of Welfare under my AFDC Budget as the puta-

tive father is supporting the child, and that the only benefits I am seeking for the child are Title XIX, medical and dental benefits.

7. I feel this action by the State of Connecticut is an invasion of my privacy and in violation of equal protection under the civil rights laws.

SALLY SMITH,
Pseudonym.

JANUARY 24, 1973.

75 STATE OF CONNECTICUT,
County of New London, ss, Norwich:

Personally appeared, SALLY SMITH, signer in the foregoing instrument, personally known to me and referred to in the foregoing affidavit as SALLY SMITH. Subscribed and sworn to before me this 24th day of January, 1973.

PATRICIA PAQUETTE,
Notary Public.

XI

AFFIDAVIT

76 STATE OF CONNECTICUT,
County of New Haven, ss, New Haven:

I, DOROTHY POE (a pseudonym I have chosen in order to protect my privacy), being first duly sworn, depose and say:

1. I am a plaintiff in the case of *Roe et al* v. *Norton*, Civil Action No. 15,589 (United States District Court, District of Connecticut).

2. My children and I are recipients of assistance from the Connecticut State Welfare Department under the Aid to Families With Dependent Children Program (AFDC), a resident of New Haven, Connecticut, and a citizen of the United States and the State of Connecticut.

3. On January 24, 1971, my daughter was born. She is not issue of any valid marriage. On several occasions since her birth, various workers at State Welfare have asked me whether I wanted to name the baby's father. I have declined to do so, and until December, 1972 I was never pressed further.

4. On December 19, 1972, I was served with a petition and subpoena requiring me, under authority of Connecticut General Statutes § 52–440b to appear in the Sixth Circuit Court and

disclose under oath the name of my daughter's father. As of this date said petition remains pending in that court.

77 5. I have been informed by my attorney that the possible penalties for refusing to so testify are a $200. fine and/or one year in jail.

6. My attorney has also informed me that there are possible advantages for my daughter and myself if I tell Welfare her father's name, including possible financial support if I go off Welfare and benefits under Social Security and other government programs. Nobody at the Welfare Department had ever informed me of that.

7. After my first child was born, I gave the Welfare Department her father's name. They have never taken any action to get him to pay support. I later realized that he would make a lot of trouble, had other dependents and had little money anyway. For those reasons I didn't want to pursue him for support. The Welfare Department never took any action against him after I gave them his name.

8. The main reason I don't want to give the Welfare Department my younger daughter's name is that I am very nervous. I go to a psychiatric clinic where I have been advised not to work because of my condition. I may also have a heart condition; the Doctor's aren't sure yet. For both psychiatric and medical reasons I do not want to be put in a position of great pressure such as testifying in court.

78 9. In addition I feel that whether to pursue support from my child's father is something I should be able to decide according to whether I think he will pay, whether he will make trouble for me, how likely we are to receive other benefits, and how much strain I would have to go through to do it.

10. I have been advised by the psychiatric clinic I attend, that it is generally good for children to know who their father is. For reasons of my own I accept this advice in one case and reject it in the other.

DOROTHY POE,
A pseudonym.

Sworn to and subscribed before me this 26th day of March, 1973.

_____,
Commissioner of the Superior Court.

79 XII

AFFIDAVIT

WILLIMANTIC, *March 27, 1973.*

STATE OF CONNECTICUT,
County of Windham, ss:

C and her two month old child reside in Willimantic, Connecticut, and are currently receiving AFDC benefits from the Connecticut Welfare Department.

On or about December 29, 1972, C was informed by an employee of the Connecticut State Welfare Department at the time she was applying for AFDC benefits that if paternity were established, her child would be entitled to Social Security benefits from the putative father. However, the *Doe* v. *Norton* Ruling on Plaintiffs' Application for a Preliminary Injunction which outlined other potential benefits was explained to her in detail by a law clerk from this office. C told this employee that there were three possible fathers of her child and that immediately after the birth of the child she would disclose all three names to the Welfare Department. She was informed by the Welfare employee that paternity could not be established through blood tests and without direct knowledge or a written acknowledgement of paternity, disclosure would be meaningless.

On or about February 27, 1973, C received a letter from Raymond J. Chabot, Esquire, a private attorney retained
81 by the Connecticut State Welfare Department, requesting C to call his office. C telephoned Mr. Chabot who requested her to disclose to him the name of her child's putative father. At that time C told Mr. Chabot that she did not know the identity of her child's putative father and upon his request sent him a letter stating that fact.

Subsequently C was served with a petition compelling her appearance before the Connecticut Circuit Court for the Eleventh Circuit and disclose the name of the child's putative father and to institute an action to establish the paternity of said child pursuant to Section 52-440b of the Connecticut General Statutes.

The Circuit Court for the Eleventh Circuit has granted C's motion for a continuance of the Court's order to appear based

upon the pendency of *Doe, et al* v. *Norton,* Civ. No. 15, 579 (D. Conn.) until April 27, 1973.

The individual referred to as C above has personally appeared before me this 28th day of March, 1973, and, under oath, has sworn to the accuracy of the above statement.

DOUGLAS M. CROCKETT,
Commissioner of Superior Court.

81 XIII

AFFIDAVIT

STATE OF CONNECTICUT,
County of New Haven, ss. New Haven:

I, SHARON ROE, (a pseudonym I have chosen to protect my privacy), being first duly sworn, depose and say:

1. I am a plaintiff in the case of *Roe et al* v. *Norton,* Civil Action No. 15,589 (United States District Court, District of Connecticut).

2. My children and I are recipients of assistance from the Connecticut State Welfare Department under the Aid to Families with Dependent Children Program (AFDC), a resident of New Haven, Connecticut and a citizen of the United States and the State of Connecticut.

3. On October 27, 1972, my daughter was born. She is not issue of any valid marriage.

4. Shortly after my daughter's birth, I applied for assistance under the AFDC Program. At that time, I was referred to the Family Relations office of the Sixth Circuit Court in New Haven. There I was asked to name my daughter's father and declined to do so.

5. On December 20, 1972, I was served with a petition and a subpoena requiring me, under authority of Connecticut General Statutes § 52–440b to appear in the Sixth Circuit Court and disclose under oath the name and whereabouts of my
82 daughter's father. As of this date said petition remains pending in that court.

6. I have been informed by my attorney, that the possible penalties for refusing to so testify are a $200. fine and/or one year in jail.

7. My attorney has also informed me that there are possible advantages for my daughter and myself if I give her father's name, including possible financial support when I go off Welfare and benefits under Social Security and other government programs.

8. I do know and could probably prove who my daughter's father is. When she is older I plan to let her know as well, whether or not she is receiving financial support from him.

9. I have several reasons for refusing to give the name to the Welfare Department.

First, the question of with whom I have had sexual intercourse is private; I don't feel I should be forced to tell any government agency that.

Second, my daughter's father has no fixed address. My attorney has informed me that if I so testify, I will be subject to unfriendly cross-examination and embarrassment in open court.

Third, I have seen him since her birth and he has started to develop a good relationship with her; he plays with her. If I were to give his name he would leave the state and break off the relationship.

83 Fourth, the only reason I have been given that the Welfare Department wants to know his name is to try to get support money from him. He has irregular earnings at best and has said that he would leave the state if I push him. Furthermore, while I am on the State, I would receive the same amount of money for her total support whether or not he is contributing to it.

Finally, I think I have, and my attorney has advised me that he thinks I have a constitutional right to decide whether it is worth while to seek financial support from my daughter's father.

SHARON ROE.
Pseudonym.

Personally appeared the person known in these proceedings as Sharon Roe who is personally known to me, and subscribed and sworn to this affidavit before me this 31st day of March, 1973.

_____,
Commissioner of the Superior Court.

84 XIV

AFFIDAVIT

APRIL 2, 1973.

STATE OF CONNECTICUT,
County of Windham, ss, Killingly:

D and her child reside in the Borrough of Danielson, Connecticut, and are currently receiving A.F.D.C. benefits from the Connecticut State Welfare Department. D received a letter dated February 26, 1973 from an attorney retained by the Welfare Department which stated that legal action would be instituted against her if she failed to disclose the name of her child's father.

No Welfare Department representative, employee, or attorney has ever explained to D that her child could obtain benefits from her putative father if paternity was established. However, the *Doe* v. *Norton* Ruling on Application for a Preliminary Injunction which outlined support and other potential benefits was explained to her in detail.

D has worked the third shift (12:00 a.m. to 8:00 a.m.) for three years to support herself and her child. D is no longer physically able to work the third shift and provide proper care for her child.

D's child is four years old and the statute of limitations regarding paternity has elapsed.

85 D has a verbal acknowledgment of paternity by her child's putative father. To the best of her knowledge, the putative father no longer resides in the State of Connecticut.

In light of the fact that D has supported her child for three years without the assistance of anyone, and in view of the facts that the putative father is most likely out of state and the statute of limitations has lapsed, D feels that instituting a paternity action would serve no useful purpose except that of invading her privacy and adversely affecting the family relationship which she has fought so long to protect.

The individual referred to as D has personally appeared before me, the day of April 2, 1973, and under oath, has sworn to the accuracy of the above statement.

RAYMOND RICHARD NORKO,
Commissioner of Superior Court.

86 XV

AFFIDAVIT

STATE OF CONNECTICUT,
County of New Haven, ss:

I, KATHERINE LOPES, being first duly sworn, depose and say:

1. I am the mother of two children who were born out of wedlock. The same man fathered both children.

2. Their father acknowledged paternity of the older child, and the acknowledgement was filed with the Connecticut Circuit Court for the Sixth Circuit. Enforcement of its support provisions is supposed to be handled by the Family Relations office of that court.

3. I have at different times since the birth of my last child applied for and received benefits from the Connecticut State Welfare Department under the Aid to Families with Dependent Children (AFDC) program. When my youngest child was born, five years ago, the Welfare Department made me reveal his father's name in order to receive welfare benefits.

4. On at least two occasions, the Welfare Department has made me go to Family Relations to sign affidavits for non-support warrants. Although I have done so, to the best of my knowledge Family Relations has never had him arrested. I have not received any support money from him during the time I have not been receiving AFDC.

5. I was told that I must bring a paternity action, and given a list of three (3) local attorneys to choose from to represent me, which I did later, my son and I were ordered to go
87 to Yale-New Haven Hospital for a blood test. Although the people at the hospital were very pleasant, they knew we were there because of the paternity action, and said so in front of my son, who was then about two (2) years old. This made me feel uncomfortable.

6. My son's father denied paternity and there was therefore a trial before the Sixth Circuit Court (New Haven). The trial was held in the regular civil courtroom with several people present who had nothing to do with the case.

7. When I testified, there was a long cross-examination by Edward Dolan, the father's lawyer. I don't remember now exactly what he asked; I seem to have blocked it from my memory. It must have been about my sexual relationship with my son's father and whether I had had other sexual relations during that time.

8. I remember that the judge who was hearing the case looked bored most of the time. I felt embarrassed and uncomfortable; for that reason I would drop my voice. But every time I did that the judge would tell me to keep my voice up so that everyone could hear.

9. My son's father also testified, denying that he was the father. I felt both angry at him for lying and very humiliated.

10. A year later the judge ruled against me, so that we have received no support or other benefits as a result of that proceeding.

11. The whole experience left me feeling dirty, as though I were a bad person for having had my son. At the time, I was worried about that feeling would make me feel and act toward him. Now, although I still feel embarrassed and humiliated whenever I think about it, I don't think it has made me love him any less.

88 12. I don't think I would be willing to go through that kind of experience again.

KATHERINE LOPES.

Sworn to and subscribed before me this 31st day of March, 1973.

_____ _____,

Commissioner of the Superior Court.

89 In the United States District Court for the
District of Connecticut

Civil No. 15589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED

Answer of the Defendant

COUNT I

1. Paragraphs 5, 6, 7 and 8 are admitted.

2. As to paragraphs 1, 2, 4, and 9, the defendant has insufficient knowledge or information to form a belief, and leaves the plaintiffs to their proof.

3. So much of paragraph 3 as alleges that this is a proper case for a three-judge court is admitted, but the remaining allegation is denied i.e. ". . . on the grounds that said statute violated . . . equal protection of the laws."

COUNT II

4. Paragraph 11 is admitted.

5. Paragraphs 12 and 13 are denied.

90 COUNT III

6. Paragraphs 14 and 15 are denied.

7. The Answers to paragraphs apply as they are incorporated in all counts.

Defendant:

By (s) JAMES M. HIGGINS,
Assistant Attorney General,
76 Meadow Street,
East Hartford, Connecticut 06108.
Tel. (203) 289-9521.

Copies hereof provided to counsel of record on April 30, 1973.

(s) JAMES M. HIGGINS,
Assistant Attorney General.

91 Civil No. 15,589

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH, AND ALL OTHERS SIMILARLY SUITED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Civil No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, AND ON BEHALF OF OTHERS SIMILARLY SITUATED

Stipulations

It is hereby stipulated by and between the parties as follows:

1. It is the intent of § 52–440 b and the practice of the Connecticut State Welfare Department in each and every case in which the mother of an illegitimate child fails or refuses to name the putative father of the child to retain an attorney for the purpose of citing the mother court if she persists in refusing to name the probative father.

2. § 52–440 b in the opinion of counsel for all the parties is a civil statute. A contempt committed under this section can be purged at any time by naming the putative father, i.e. putative father, in the opinion of counsel of record herein.

92 DEFENDANT'S EXHIBIT A

STATE DEPARTMENT OF HEALTH,
Hartford, Conn., March 15, 1973.

Mr. JAMES HIGGINS,
Office of Finance and Control,
76 Meadow Street,
East Hartford, Conn.

DEAR MR. HIGGINS: I enclose tables of resident live births in Connecticut by legitimacy. Table IV is a continuation of the time interval to the latest year available (1971). The percentage of illegitimate births are broken first by age of mother and by race.

Very truly yours,

EDWARD C. AUBIN,
Research Analyst, Public Health Statistics Section.

Enclosure.

CONNECTICUT BIRTHS BY RACE AND LEGITIMACY, 1950–65

MOTHERS OF ALL AGES

Year	All races				White births				Nonwhite births			
	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate
1950	40,485	39,812	673	1.7	38,860	38,366	494	1.3	1,625	1,446	177	11.0
1951	43,506	42,724	782	1.8	41,695	41,138	557	1.3	1,811	1,586	225	12.4
1952	46,537	45,702	835	1.8	44,516	43,924	592	1.3	2,021	1,778	243	12.0
1953	47,906	47,109	887	1.8	45,799	45,214	585	1.3	2,197	1,895	302	13.7
1954	50,428	49,470	958	1.9	47,902	47,284	618	1.3	2,526	2,186	340	13.5
1955	52,339	51,278	1,061	2.0	49,564	48,906	658	1.3	2,775	2,372	403	14.5
1956	53,584	52,495	1,089	2.0	50,558	49,921	637	1.3	3,026	2,574	452	14.9
1957	56,909	55,671	1,238	2.2	53,456	52,741	715	1.3	3,453	2,930	523	15.1
1958	56,344	54,799	1,445	2.6	52,645	51,801	844	1.6	3,599	2,998	601	16.7
1959	56,423	54,827	1,596	2.8	52,472	51,653	819	1.6	3,951	3,174	777	19.7
1960	56,659	54,871	1,788	3.2	52,642	51,687	955	1.8	4,017	3,184	833	20.7
1961	57,046	55,041	2,005	3.5	52,716	51,608	1,108	2.1	4,330	3,433	897	20.7
1962	55,480	53,176	2,304	4.2	50,978	49,792	1,186	2.3	4,502	3,384	1,118	24.8
1963	56,476	53,959	2,517	4.5	51,513	50,189	1,324	2.6	4,963	3,770	1,193	24.0
1964	56,611	53,771	2,840	5.0	51,582	50,093	1,489	2.9	5,029	3,678	1,351	26.8
1965	54,268	51,067	3,141	5.8	49,034	47,373	1,661	3.4	5,174	3,694	1,480	28.6
1950–65, total	840,931	815,772	25,159	3.0	785,932	771,690	14,242	1.8	54,999	44,082	10,917	19.8
1966	53,131	48,709	3,422	6.6	47,039	45,256	1,783	3.8	5,092	3,453	1,619	32.0

Year	All races				White births				Nonwhite births			
	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate
1950	38,596	38,139	457	1.2	37,214	36,874	340	0.9	1,382	1,265	117	8.5
1951	41,385	40,818	567	1.4	39,858	39,432	425	1.1	1,527	1,386	141	9.2
1952	44,316	43,732	584	1.3	42,578	42,157	421	1.0	1,738	1,575	163	9.4
1953	45,567	44,935	632	1.4	43,681	43,253	428	1.0	1,886	1,682	204	10.8
1954	47,694	47,031	663	1.4	45,568	45,120	448	1.0	2,126	1,911	215	10.1
1955	47,406	48,664	742	1.5	47,059	46,606	453	1.0	2,347	2,058	289	12.3
1956	50,338	49,574	764	1.5	47,786	47,336	450	.9	2,552	2,238	314	12.3
1957	52,941	52,080	861	1.6	50,039	49,541	498	1.0	2,902	2,539	363	12.5
1958	52,177	51,217	960	1.8	49,144	48,588	556	1.1	3,033	2,629	404	13.3
1959	52,292	51,210	1,082	2.1	48,952	48,412	540	1.1	3,340	2,798	542	16.2
1960	52,113	50,909	1,204	2.3	48,709	48,106	603	1.2	3,404	2,803	601	17.7
1961	52,326	50,954	1,372	2.6	48,624	47,904	720	1.5	3,702	3,050	652	17.6
1962	50,405	48,858	1,547	3.1	46,625	45,869	756	1.6	3,780	2,989	791	20.9
1963	51,478	49,749	1,729	3.4	47,290	46,421	869	1.8	4,188	3,328	860	20.5
1964	51,534	49,611	1,923	3.7	47,348	46,388	960	2.0	4,186	3,223	963	23.0
1965	48,961	46,860	2,101	4.3	44,755	43,658	1,097	2.5	4,206	3,202	1,004	23.9
1950-65	481,529	764,341	17,188	2.2	735,230	725,665	9,565	1.3	46,299	38,676	7,623	16.5
1966	46,428	44,283	2,145	4.6	42,454	41,336	1,118	2.6	3,974	2,947	1,027	25.8

Year	All races				White births				Nonwhite births			
	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate
1950	1,889	1,673	216	11.4	1,646	1,492	154	9.4	243	181	62	25.5
1951	2,121	1,906	215	10.1	1,837	1,706	131	7.1	284	200	84	24.6
1952	2,221	1,970	251	11.3	1,938	1,767	171	8.8	283	203	80	28.3
1953	2,429	2,174	255	10.5	2,118	1,961	157	7.4	311	213	98	31.5
1954	2,734	2,439	295	10.8	2,334	2,164	170	7.3	400	275	125	31.3
1955	2,733	2,614	319	10.9	2,505	2,300	205	8.2	428	314	114	26.6
1956	3,246	2,921	325	10.0	2,772	2,585	187	6.7	474	336	138	29.1
1957	3,968	3,591	377	9.5	3,417	3,200	217	6.4	551	391	160	29.0
1958	4,067	3,582	485	11.9	3,501	3,213	288	8.2	566	369	197	34.8
1959	4,131	3,617	514	12.4	3,520	3,241	279	7.9	611	376	235	38.5
1960	4,546	3,962	584	12.8	3,933	3,581	352	8.9	613	381	232	37.8
1961	4,720	4,087	633	13.4	4,092	3,704	388	9.5	628	383	245	39.0
1962	5,075	4,318	757	14.9	4,353	3,923	430	9.9	722	395	327	45.3
1963	4,908	4,210	788	15.8	4,223	3,768	455	10.8	775	442	333	42.0
1964	5,077	4,160	917	18.1	4,234	3,705	529	12.5	843	455	388	46.0
1965	5,247	4,207	1,040	19.8	4,279	3,715	564	13.2	968	492	476	49.2
1950-65	59,402	51,431	7,971	13.4	50,702	46,025	4,677	9.2	8,700	5,406	3,294	37.9
1966	5,703	4,426	1,277	20.4	4,585	3,930	665	14.5	1,118	506	612	——

Year	All races				White births				Nonwhite births			
	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate	Total births	Legitimate	Illegitimate	Percent illegitimate
1967	49,840	46,141	3,699	7.4	44,846	42,880	1,966	4.4	4,994	3,261	1,733	34.9
1968	48,633	44,596	4,037	8.3	43,527	41,379	2,148	4.9	5,106	3,217	1,889	39.0
1969	50,146	45,628	4,518	9.0	44,768	42,351	2,417	5.4	5,378	3,277	2,101	39.1
1970	50,738	45,887	4,851	9.6	45,073	42,569	2,504	5.6	5,665	3,318	2,347	41.4
1971	45,633	41,100	4,533	9.9	40,311	38,111	2,200	5.5	5,322	2,989	2,333	43.8
MOTHERS UNDER 20, TEENAGE												
1967	5,503	4,062	1,441	26.2	4,277	3,561	716	16.7	1,226	501	725	59.1
1968	5,409	3,793	1,616	29.9	4,091	3,301	790	19.3	1,318	492	826	60.7
1969	5,627	3,806	1,821	32.4	4,277	3,370	907	21.2	1,350	436	914	67.7
1970	5,924	3,873	2,051	34.6	4,478	3,470	1,008	22.5	1,446	403	1,043	90.5
1971	5,380	3,454	1,926	35.8	4,017	3,147	870	21.7	1,363	307	1,056	79.3
BIRTHS (MOTHERS 20 AND OVER)												
1967	44,334	42,079	2,258	5.1	40,569	39,319	1,250	3.1	3,768	2,760	1,000	26.8
1968	43,224	40,803	2,421	5.6	39,436	38,078	1,358	3.4	3,788	2,725	1,063	28.1
1969	44,519	41,822	2,697	6.1	40,491	38,981	1,510	3.7	4,028	2,841	1,187	21.5
1970	44,814	42,014	2,800	6.2	40,595	39,099	1,496	3.7	4,219	2,915	1,304	30.1
1971	40,253	37,646	2,607	6.5	36,294	34,964	1,330	3.7	3,959	2,682	1,277	32.3

TABLE 4.—SELECTED CHARACTERISTICS OF THE CONNECTICUT-RESIDENT NEWBORN POPULATION, EACH YEAR SINCE 1955

Year	Total number live births	Birth weight of 5½ pounds or less		Nonwhite		Illegitimate		Mothers under age 20 or over age 34		Birth order number of 5 or greater	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1955	52,330	3,551	[1] 7.1	2,775	5.3	1,061	2.0	9,738	18.6	4,556	8.8
1956	53,584	(1)	(1)	3,026	5.6	1,089	2.0	10,173	19.0	5,641	10.6
1957	56,909	4,269	[1] 7.6	3,453	6.1	1,238	2.2	11,383	20.0	7,235	12.9
1958	56,244	4,164	7.4	3,599	6.4	1,445	2.6	11,352	20.2	8,160	14.6
1959	56,423	4,253	7.6	3,951	7.0	1,596	2.8	11,415	20.2	8,817	15.8
1960	56,659	4,341	7.7	4,017	7.1	1,788	3.2	11,730	20.7	9,217	16.4
1961	57,046	4,441	7.8	4,330	7.6	2,005	3.5	11,967	21.0	9,860	12.4
1962	55,480	4,343	7.8	4,502	8.1	2,304	4.2	11,743	21.2	9,968	18.0
1963	56,476	4,618	8.2	4,963	8.8	2,517	4.5	11,659	20.6	10,405	18.5
1964	56,611	4,653	8.3	5,029	8.9	2,840	5.0	11,596	20.3	10,478	18.3
1965	54,208	4,654	8.6	5,174	9.5	3,141	5.8	11,217	20.7	9,769	17.9
1966	52,131	4,416	8.5	5,092	9.8	3,422	6.6	11,192	21.5	6,247	15.3
1967	49,840	4,109	8.3	4,993	10.0	3,699	7.4	10,292	20.7	7,377	14.8
1968	48,633	3,948	8.1	5,106	10.5	4,037	8.3	9,585	19.7	6,247	12.9
1969	50,146	4,042	8.1	5,378	10.7	4,518	9.0	9,412	18.8	5,914	11.7
1970	50,738	3,923	7.8	5,665	11.2	4,851	9.6	9,460	18.7	5,424	10.7
1971	45,633	3,455	7.6	5,322	11.7	4,533	9.9	8,320	18.2	4,543	10.3

[1] The 1955 to 1957 increase in the percent of "low birth weight" is probably due to a change in the reporting procedure.

98–1 CHILDREN'S EXHIBIT 1

In the United States District Court for the District of Connecticut

Civil Action No. 15,579

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH, AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

March 28, 1973

Civil Action No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Deposition of Albert J. Solnit, M.D.

98–2 *Appearances:*

FOR THE INTERESTS OF THE CHILDREN:

ROSEN AND DOLAN
By: DAVID N. ROSEN, ESQ.
EDWARD J. DOLAN, ESQ.
265 Church Street
New Haven, Connecticut

FOR THE PLAINTIFFS:

RAYMOND KELLY, ESQ.
35 Village Street
Rockville, Connecticut
FRANK COCHRAN, ESQ.

FOR THE DEFENDANTS:

MICHAEL ANTHONY ARCARI, ESQ.
76 Meadow Street
East Hartford, Connecticut

witness called pursuant to agreement, being, first duly sworn in the above cause, testified on his oath as follows:

DIRECT EXAMINATION

By Mr. ROSEN:

Q. Doctor, by whom are you employed?

A. Yale University.

Q. And what is your position?

A. I'm a Professor of Pediatrics and Psychiatry, and Director of the Child Study Center, and Chairman of the Center for the Study of Education.

Q. And can you state briefly your educational background?

A. Yes. I have a Bachelor's Degree from the University of California, a Master of Arts from the University of California, an M.D. from the University of California, and Honorary Master of Arts from Yale University.

Q. And can you give some of your professional background and professional memberships?

98–4 A. Yes. After completing my medical school education, I became fully trained in pediatrics, in psychiatry, child psychiatry, and psychoanalysis. I'm certified in psychiatry and in child psychiatry.

I have the equivalency of—well, I'm called what's called board eligible in pediatrics, and I'm a member of both the American Academy of Pediatrics and the American Academy of Child Psychiatry. I'm President of the American Academy of Child Psychiatry, and the past President of the American Psychoanalytic Association and the Association for Child Psychoanalysis; also, the Secretary-General of the International Association for Child Psychiatry and Allied Professions.

Q. Now, Doctor, have I acquainted you with the provisions of Connecticut Statute 52-440b which relates to a requirement that mothers, certain mothers, be required to name the putative father of children——

A. Yes.

Q. —and institute paternity action?

A. Yes, you have.

Q. And have you, through your training and experience, formed conclusions about what you think the implications of this statute would be in situations for the children of such mothers?

A. Yes, I have.

Q. And you can state in as much length as you think
98–5 is necessary what you feel the major implications of the statute may be in different situations for different children?

A. Yes. I think the most important consequence of that act, in terms of what serves children best, is the threat it offers to the ability of the mother to provide care for the child by requiring the mother to institute a paternity—what would you call it?——

Q. Action.

A.—action. It seems to me that that action does not take into account what the child's needs are in a particular situation. The child, from our best knowledge, requires a steady and affectionate relationship on a continuous basis to at least one parent. And if this is jeopardized or stressed, then the most important needs of the child are placed in jeopardy. By requiring the mother to institute a paternity action in order to qualify for economic support, I believe, from my clinical experience and my work as a child psychiatrist, that that adds an unnecessary stress to the mother's capability of caring for her child. The support for the child, the support for the intactness of that family, should not, in my opinion, be conditional upon such a requirement as that which the law has made necessary.

Q. What do you see as the possible advantages and disadvantages of such requirement with respect to the child's relationship with the child's father?

98–6 A. I would not be able to judge that categorically except in one way. A child thrives from an affectionate relationship to both parents, especially if both parents have a harmonious and an affectionate relationship to each other. So that the child's opportunity for a continuous and meaningful relationship to the father is very important, if it is not at the risk of jeopardizing his tie and attachment to his mother.

In these instances, I assume the mother is the primary parent and the one with whom the child has the primary psychological relationship. That can be enriched, it can be elaborated, and

it can in addition help the child have a better sense of himself if the father is also involved.

However, the law, it seems to me, doesn't seem to promote a harmonious relationship between parents by requiring the mother to institute legal action against a putative father. In that sense it seems to me to work against the best interests of the child, and especially in connection with wanting him to have a good relationship to his father as well as his mother.

Q. Do you think that there might be possibilities—strike that. Do you see a danger in some instances of fathers becoming resentful of mothers or children, and that being harmful to the child?

A. Yes, I could see the father would avoid contact with the child which otherwise he might maintain, and he might
98–7 avoid contact with the mother which otherwise he might maintain, if he feels that the condition for the relationship is one of economic—is one required by the law in order to provide economic support for the mother and child, or mother and children.

Q. What do you see as the implications for the child if a mother is sent to jail for refusing to give the name of a father?

A. That could be, and usually is, catastrophic. If there is a good relationship between the mother and child and the mother is truly the affectionate psychological parent, by putting the mother in prison we remove the most crucial support and guiding influence to assure the sound and healthy development of the child, and especially if it's a young child.

Q. When you say the damage is catastrophic, can you give some estimate of how serious it is to a child to have a parent removed in the early part of its life?

A. For children under the age of five or six to lose that person on whom they count for support, for guidance, for protection and for the stimulating, nourishing love on which a child depends for development, exposes them to, first of all, a feeling of helplessness than which there is no more devastating feeling for a child to have—a feeling of depression, a feeling that you cannot count on your world to be a dependable or safe one. And then in proportion to the adequacy of a substitute for
98–8 the mother, which is not guaranteed by our society at this time, the child may have some recovery from that devastating impact, but the degree of recovery is never whole. It's never a complete recovery, there's always some impairment,

some vulnerability that is brought about with such an abandonment, because that is how the child experiences it—a young child experiences that as an abandonment by the adult on whom they have counted.

Children of that age can endure other stresses, which I would like to illustrate, much better than they can the loss of the maternal love object, the maternal loving person. They can endure hunger, they can endure bombing raids, they can endure natural catastrophies and come through them relatively unscathed psychologically, if they are physically all right. But they cannot escape the devastating impact of the loss of the person who has taken care of them since they were born, helpless as an infant into this world.

Q. Have you found it to be true in many instances that children who do not know who their father is are curious and have a psycho'ogical need to know the identity of their father?

A. I would say it's almost universal that a child whose father is absent is a child who is curious, who tries to imagine, tries to find ways directly and indirectly to understand who his father or her father is, what they were like, how they grew up, what they're about, what they represent, and what kind of
98–9 guiding influence they could be for the child in future experiences.

Q. Is it, in your opinion, invariably in the child's best interest to be told the name of the father?

A. No. I think there are instances in which it would appear that the knowledge of who the father is, of knowing the father's name, is not guaranteed to serve the child's best interest. There's a difference between knowing the father's name and knowing the father, and wanting to know who the father is, being curious and trying to fill in through one's imagination or through one's sources of information who the father is and what he's like.

The difference is this: If you take the instance of adoption, of children who are adopted from the earliest infancy on, many of our societal customs, convictions are that it would be best, since the true psychological parents are now the adopted parents, to not complicate the child's life or the lives of the two sets of adults involved, by expecting the child to know who the biological parents were. Therefore, it is a custom, in some places a law, that the actual identity of the biological parents is a

confidential matter not to be given to either the adoptive parents or the adopted children.

I have found that that can work very well. And, indeed, if that's the way people prefer it and it works out better, there is no reason why a child cannot overcome and master and thrive, through mastery of that absent knowledge, so
98–10 long as the adequacy of the parents who are in charge of his upbringing from infancy on is an adequate one. So in that sense it's not required.

I also know many children who have been born out of wedlock where the mother and the father have decided to not become married, where the mother has preferred to relate her child to another male figure than the one who is the biological father. And, again, although it may not be ideal, it is not a permanent hindrance to an adequate development on the part of that child.

Q. In your opinion, where do you think, from the perspective of the child's interests, where do you think the power to make a decision about whether to pursue paternity proceedings ought best to be placed?

A. From the point of view of the child, which is who I speak for, it would be the mother who ought to make that decision.

Q. Why do you think so?

A. Because she's the one who has the care and the responsibility and the loving affectionate bond with that child, and therefore a decision as to what's in his best interests ought to first come from her.

Mr. ROSEN: Anyone who wants to question the doctor in the next five minutes? Off the record.

(Discussion off the record.)

CROSS-EXAMINATION

98–11 By Mr. ARCARI:

Q. Doctor, from your testimony I gather that you are under the impression that section 52–440b is in existence purely for economic reasons. Is that your opinion of it?

A. I have no comprehensive understanding what motivated the people who drew up that law.

Q. In other words, I got the impression that you felt that Section 52–440b was in existence or is in existence to allow anyone pursuing that statute to obtain support for a child born out of

wedlock, or is the statute concerned more with the support, the financial aspect?

A. Right, I understood it to be more a matter of financial support, but whether it had other motives in it, I didn't know.

Q. You understood, generally speaking, that if the mother was forced to disclose the name of the father this could cause stress on a child——.

A. Yes, it could.

Q. —as far as the care of a child?

A. If it were forced upon the mother, yes.

Q. Now, there are some cases, I take it, where, if the child knew his or her father, that the results might be beneficial?

A. I would not separate how that's done from what is done. In other words, if the mother, as an act of love toward
98–12 both the child and toward the father, arranged for that father and child to know each other and be together, yes, that would be favorable to the development of the child.

Q. It has something to do with the approach——.

A. It has to do with the spontaneity and the representation it has for loving attachments.

Q. Right. And in this action where we're dealing in a relationship between father and child, the relationship could develop a healthy normal relationship?

A. If it's within a proper context.

Q. The only thing I want to clear up is, I believe you said—correct me if I'm wrong—but I think you indicated that if a child was told later, later on, the name of his or her father, that this would not necessarily be—this would work against the interests of the child. Am I correct in making that statement?

A. No. I didn't take a stand on that.

Q. I see.

A. I simply said that a child can benefit from knowing who the father is. I also said a child can accept the deprivation or frustration—frustration of not knowing who the father is—and, with a proper kind of attachment to the primary psychological parent, be able to use that frustration in a way that's favorable to his or her development.

Q. Right. In accordance with those comments, I think
98–B you indicated that it's possible that a child, under the improper circumstances, I guess, if the name of the father was disclosed to the child, it could build resentment within the father against the mother?

A. It could be a negative factor because it could be done with two influences that make it negative: One, the mother is compelled to do it and does it out of fear of the law or the consequences of not being able to comply with the law. That means it's already an act in which she's doing it against her own free choice or her own spontaneous impulse. And, secondly, it tends to put the father—and this, I think, is a very detrimental factor—it places the father in a negative light for the child and says to him, "This is bad or this is undesirable, this has to be required by the law," and it gives him a negative image of the father.

Q. Right. Well, in any event, you would have to be fair and say that this does not necessarily happen in all cases. There would have to be some cases where perhaps the father takes a different view entirely. In other words, he doesn't have a negative attitude towards——.

A. You mean where the mother would be required to——.

Q. No, in any circumstances, whether the mother involved voluntarily discloses the name or, in some cases, where she might be forced to disclose the name.

98–14 A. Not where she's forced to. I cannot see any way in which that could be helpful to the child.

Q. In other words, you're saying if the mother were forced to disclose the name of the father involved, that, first of all, would perhaps have a negative result on a child—I say "perhaps"——.

A. Likely to.

Q. All right, likely to—but would it always have a negative effect on the father where the resentment would show up? In other words, I'm not saying in every case now.

A. Oh, yes, I think you can be fairly certain that the father invariably is going to feel resentful and feel negative—well, he's going to feel not only resentful but he's going to feel unable to invest in the relationship with his child and child's mother in a positive way. He's going to tend to avoid that relationship rather than to be available to it should it be desirable.

Mr. ROSEN: Off the record.

(Discussion off the record.)

Q. You're saying in every case the father would develop this negative attitude. I just want a yes or no, Dr. Solnit, under the so-called circumstances——

A. Well, in human behavior, you learn very quickly to never say always—almost always.

Q. All right, almost always. We haven't pinned this
98–15 thing down as to time. In other words, dealing with the example we had, if the mother were forced to give the name of the father, and of course he took, in other words, a negative attitude towards the relationship, if you recognized there is resentment at first, could this resentment be dissipated where eventually a relationship could be built between the father and child——

A. It's always possible for these things to be overcome and dissipated in the light of subsequent corrective experiences, but it's unlikely to, and it puts at a disadvantage, and at significant risk, future experiences. They will tend to always then be negative rather than tend to be positive. So, yes, it's possible but unlikely.

Mr. ROSEN: Mr. Kelly has one question.

CROSS-EXAMINATION

By Mr. KELLY:

Q. Doctor, would it ever be to a child's advantage, if he's in a family situation where he has brothers or sisters from a previous—you know, they were born to the mother by a previous father in the marriage relationship—for him to know that his father was not the same individual that fathered the first two children?

A. That kind of knowledge need not be necessarily negative.

It has to be interpreted in the light of the setting and the
98–16 context in which it takes place. It may be negative, it may be positive. It often can be positive because children tend to form a community of interests and tend to form friendships and attachments which are terribly important to them, and therefore if they had different fathers, that's not necessarily a negative factor.

Q. But if a child thought his father was the same father of his brothers and sisters and that turns out not to be true—.

A. That often is a jolt and a child can overcome that jolt. It depends on how it's presented. If it's presented as something that's compelled by law——.

Q. If it were presented in a court situation?

A. In a court situation as compelled by law and with an implied criticism, then it's very detrimental because it means somehow society is prejudiced against that child and his forbears. But if it's presented as something which people come to by themselves of their own volition and as a result of their own experiences, there isn't anything that necessarily says that that's negative. That's what I meant by "context." When compelled, when forced, then the child is very likely to experience that as not only a negative but a threatening kind of experience.

Mr. ARCARI: I do have a couple of quick questions. I think the doctor can very quickly answer.

Mr. ROSEN: Ask him one.

98–1 By Mr. ARCARI (continued):

Q. Where a child does not know the name of his father, can this build up stress in a child's mind?

A. Where a child does not know the name of the father, it tends to create a frustration, a challenge which the child can overcome.

Q. And do you have any opinion as to what happens if the child should find out who his father is later in life, anything at all?

A. I think I've answered that by saying it depends on the context in which it comes about. It can be a very positive thing or it can be very stressful.

Q. Yes. And all your testimony today, this is based, I believe you indicated on clinical experience?

A. On clinical experience, on a wide reading of the subject, on being the editor of a number of professional journals, which I didn't list because of the shortness of time. I'm the Chief Editor of the "Psychoanalytic Study of the Child." I'm on the editorial board of "Pediatrics." I'm on the editorial board of "Children." I'm on the editorial board of "Hospital and Modern Psychiatry," and a few others.

Q. But anyway, it's partly clinical?

A. Partly clinical, partly out of my studies on the subject.

98–18 Mr. ARCARI: That's all.

Mr. ROSEN: Thank you very much, Doctor.

19–20 * * * * *

99–1 CHILDRENS EXHIBIT 2

In The United States District Court for the District of Connecticut

April 4, 1973

Civil Action No. 15, 579

DOE, ET ALS., PLAINTIFFS

v.

NORTON, DEFENDANT

Civil Action No. 15, 589

ROE, ET ALS., PLAINTIFFS

v.

NORTON, DEFENDANT

Deposition of Caroline E. Packard

Appearances:

FOR THE PLAINTIFFS (Guardian ad litem)
ROSEN & DOLAN
265 Church Street,
New Haven, Conn.
By: Edward Dolan, Esq.

99–2 FOR THE PLAINTIFFS (Roe and Doe)
Raymond J. Kelly
35 Village Street,
Rockville, Connecticut

FOR THE DEFENDANT:
Michael Arcari, Esq.
Assistant Attorney-General
State of Connecticut
76 Meadow Street
East Hartford, Connecticut

. . . Deposition of CAROLINE E. PACKARD, taken on behalf of the Plaintiffs in the above-entitled cause, wherein Roe and Doe, et als, are plaintiffs and Norton is Defendant, pending in the United States District Court, District of Connecticut, held on April 4, 1973, held at the offices of the Welfare De-

partment, State of Connecticut, at 1000 Asylum Street, Hartford, Connecticut, before Paul D. Landman, a Notary Public in and for the State of Connecticut, County of Hartford, pursuant to notice, at which time the parties were represented as hereinbefore set forth . . .

STIPULATIONS

99–3 All objections, except as to form, are reserved for the trial.

The reading and signing of the deposition are waived. Formalities as to notice and proof of the authority of the Notary Public are waived.

CAROLINE E. PACKARD

the witness named in the notice, having been duly sworn in the above-entitled cause, testified on her oath as follows:

DIRECT EXAMINATION

By Mr. DOLAN:

Q. Mrs. Packard, who is your employer?

A. Connecticut State Welfare Department.

Q. How long have you been employed by that Department?

A. Since July of 1965.

Q. And in what capacity are you employed by the Welfare Department at this time?

A. I am Chief of Policy Development and Staff Services.

Q. How long have you held this position?

A. I believe it was January, 1971 that I was appointed as the Chief.

Q. How long have you been part of the staff with respect to the development of policy?

99–4 A. Since July, 1965.

Q. Could you describe briefly, please, what your duties are with respect to that job?

A. In general I direct the development of policy to implement Federal regulations, state laws, co-ordination of laws and regulations, and I issue this material to the District Offices for their operation of the policy, that is, in general.

Q. Thank you. While you have been employed in that capacity has the naming of the father of an illegitimate child by a welfare mother ever been made a condition of eligibility for that child?

Mr. ARCARI: I'm sorry, excuse me.

(Discussion off the record.)

The WITNESS: I believe that at the time of the court injunction, which I think was in 1968 when the court said that you cannot require a mother to name the father, as we had done in a few previous cases when we did say it was a condition of eligibility, then it was taken to court and there was an injunction against this. Then we did not have a correct interpretation or direction from the Attorney-General's office so we continued to make it a condition of eligibility for the mother, but not the child. Then that was stopped and from that point on it has not been a condition of eligibility.

It was in this period—I would have to check policy to
99–5 get the dates of when it was a condition of eligibility.

Q. Did you play a role in the development of that policy?

A. All policy since 1965, including that policy, has been one that I have played a role in.

Q. Could you tell us briefly what role you played in the development of that specific policy?

A. The policy which said that she must name the father to be eligible for assistance, to be a condition of eligibility?

Q. That's right.

A. I'm sorry, I don't have those dates but a few months prior to the time the case was heard in court there had been a change in policy at the direction of the Attorney-General and the Commissioner of Welfare, to say that we must require that a mother name the father of the child. Prior to that we had requested that she name the father, but if there were some good reason why the child's father should not be named we had discretion not to name the father, not to require the mother to name the father. Then at the direction of the Attorney-General, the Commissioner followed his direction and we put in the policy that she must name the father of the child.

Q. But did the Attorney-General request this on his own initiative or did he issue this directive with respect to
99–6 making it a condition of eligibility at the request of the Department?

A. We did not request him. I don't know the background and his discussion with the Commissioner at that time.

Q. Subsequent to that was the swearing out of warrants for the arrest of the alleged fathers of illegitimate children ever made a condition of eligibility?

A. I would have to check policy. You know, I can't give a definitive statement. I would rather not, you know, take a guess and be wrong.

Q. Are you familiar with Section 52–440b of the Connecticut General Statutes?

A. Which statute is that?

Q. This is the statute which seeks to compel the mother of illegitimate children on welfare to name the father of such children.

A. Yes.

Q. You are familiar with that?

A. Yes.

Q. What role did the welfare policy division play in the implementation of that statute?

A. Well, after discussions on the top administrative level, after the law was passed, and discussions with the Attorney-General's office as to ways to implement the law, I was then given the direction that we should implement the law.
79–7 I worked, or people under my direction worked out the procedural aspects of following the law.

Q. But did you play any role in the promulgation of this law to the Legislature?

A. No.

Q. What was the planned effect of this law on the financial structure of the Welfare Department?

A. I have no knowledge of the people who wrote the law, what they had planned.

Q. Well, from the point of view of the policy department of the Welfare Department, what effect did you expect that it would have on the financial structure of the Department?

A. I wasn't concerned with what effect it would have. We would have to carry out the law so there was no study made to my knowledge to see what effect there would be.

Q. Has any study been made since to determine what effect this has had on the financial structure of the Welfare Department?

A. Not to my knowledge, and I do not believe there has been any.

Q. To the best of your knowledge did the Department take a position with respect to the passage of such a law?

A. No, not to my knowledge.

Q. To the best of your knowledge is there any statistical data available to measure the cost of support actions and the
99–8 cost of collection against the amount of money actually raised in this kind of a situation?

A. Not to my knowledge.

Q. Let me ask you, please, some questions with respect to your role in the actual implementation of the statute after it had been passed. Do you have with you the pertinent Welfare Department regulations which were issued in the Welfare manual subsequent to the passage of the law?

A. Yes.

Q. And could we enter them as exhibits into the record?

A. Yes.

(The above-described eligibility provision—Child born out of wedlock—was received and marked as Plaintiff's Exhibit 2 for Identification.)

Q. When the pertinent new sections of the Welfare Department Manual were added were there any additional instructions other than those which you have already made an exhibit which were submitted to the District Offices?

A. There have been two memoranda sent to the District Office. One was completely related to the fact that it is not an eligibility requirement for the mother to name the father of the child because in some districts, because of new personnel and perhaps they are not familiar with policy, they had said that she would have to name them. So we sent a memo saying
99–9 that this was not a fact of eligibility. "You must follow the policy."

Then on another occasion this came to our attention again that the policy had not been followed so we sent another memo. We again said it was not a condition of eligibility and this memo also said it was not a factor of eligibility when the mother is advised that she is subject to being cited into court and compelled to testify by the court. The latter memo is dated January 6, 1973 and the first memo I referred to is April 12, 1972. I have them here.

Mr. ARCARI: The first one was January what?

The WITNESS: The first one I mentioned was April 12, 1972 and the second one was January 6, 1973.

Mr. DOLAN: Could we also have those marked as Plaintiff's Exhibits 3 and 4?

(The April 12, 1973 memorandum described above was received and marked as Plaintiff's Exhibit 3 for Identification.)

(The January 6, 1973 memo described above was received and marked as Plaintiff's Exhibit 4 for Identification.)

Q. In addition to the printed material which has already been supplied and marked for identification, were any other instructions sent down from the main office to the departments with respect to the implementation of this statute?

99–10 A. Not directly. I know that when any new policy goes out, the district is expected to have their supervisory meetings, or whatever kind of staff development program they have. They will instruct the workers to follow the policy and explain the policy. But there were no other specific directions. They are expected to implement whatever policy is issued.

Q. Were there specific departmental staff meetings organized at the local level to discuss the implications of this and the method of implementation?

A. I don't really know what the districts actually did.

Q. Were there any form letters prepared to be sent to such mothers as refused to provide the information requested in the statute?

Mr. ARCARI: One clarification. Form letters as to what? You are talking about any form letter at all?

Mr. DOLAN: No. What I asked was, were there any form letters prepared to be sent to mothers who refused to comply with this statute informing them of what next steps would be taken with respect to them.

The WITNESS: Not from this central office.

Q. Do you know of any which exist on the local level?

A. No, I don't.

Q. With respect to this statute and the implementation of it, were there correspondences between the Department

99–11 and the Department of HEW?

A. I don't recall any. When we do issue policy, however, we send a formal submittal to them to advise them of the issuance of new policy, so we would have that kind. But other correspondence I don't remember.

Q. If there had been any such correspondence would they have been made through you?

A. Either through me generally, or if somebody else for some reason would be writing, then generally it would be cleared through me.

Q. And you remember no such specific communication?

A. I don't remember any.

Mr. DOLAN: I don't have any further questions, thank you.

Mr. KELLY: I would like to ask some questions.

CROSS-EXAMINATION

By Mr. KELLY:

Q. Does the Department of HEW normally reply to any policy statements that you may submit to them?

A. Yes, they either accept it or they don't accept it.

Q. But they would send something back to you?

A. Yes.

Q. And you did not receive anything with relation-
99–12 ship to 52–440b?

A. I would have to check to see.

Q. Would you check on that?

A. I would have to check to see if a submittal has been returned.

Q. When did you submit it to HEW?

A. I would have submitted it around the time that it was issued in policy.

Q. And when was that?

A. That was August of '72. Yes, it was effective August of 1972 so it would have been sometime after that date.

Q. Mr. Dolan asked you earlier about policy that had been promulgated back in 1968 involving the refusal to grant welfare benefits to a recipient if they didn't name the father of the child. Did you also send those policies in to HEW at that time?

A. Yes.

Q. Did you receive a response to those?

A. I would imagine so. I can't give you an answer unless I would check the records.

Q. Has the Policy Development Section which you are in charge of done any studies to show what kind of benefits a child can obtain under 54–440b, and by that I mean Social

Security, Unemployment Compensation and Workmen's Compensation benefits?

99–13 A. I don't know what you mean by "studies." We haven't had a formal study, but we do know that when a child has a legal father he can get certain benefits.

Q. But there has been no formal study done to ascertain dollar amounts that would come to the benefit of the child?

A. That's right. There has been no formal study made, actual dollar amounts study.

Q. And this policy has been in effect since August of 1972?

A. That's correct.

Q. Is your department, your section of the Welfare Department, the one that would normally issue such a study?

A. It would actually be conducted by some other section. If a decision were made to make such a study, we could participate in setting up some kind of format for a study, if this were to be, but we have a Research and Statistics Division that I would assume would collect data, if a study were set up, and they would collect the information.

Q. The authorization for a study on the financial impact of 52–440b, as far as benefits to the child go, would come from your office?

A. The Commissioner of Welfare would authorize the study.

Q. To your knowledge there has not been any study done?

A. To my knowledge there has been no study.

Q. Just to clarify another point, Mr. Dolan asked you

99–14 if the financial impact of 52–440b had been assessed by the Welfare Department, and you stated, "No, not to our knowledge."?

A. That's correct.

Q. Is any study planned through your office?

A. No, not to my knowledge.

Q. You also mentioned earlier in discussing prior welfare eligibility standards back in 1968 that there had been a policy in the Welfare Department concerning when a mother would not be required to name the father?

A. That's correct.

Q. Do you remember what those reasons were? You mentioned "if there were good reasons." I think that was your wording.

A. I don't remember the exact criteria. I remember it said in the judgment of the worker, and there were some criteria spel-

led out, but I didn't come prepared to answer that. I would have to check.

Q. Would you check that also, please?

A. Yes.

Q. Are there any criteria under 52–440b to vest discretion in the worker similar to that criteria of 1968?

A. Since the law doesn't give any discretion there is no policy for discretion.

Q. Okay. Does your Policy Development Section keep any statistics involving cases that have gone to court where
99–15 the mother has been compelled to name the father of the child?

A. There is no collection of any such statistics at a central location, in my Division or any other, to my knowledge.

Q. So there is no collection of raw data about these 52–440b cases?

A. No, not to my knowledge.

Mr. KELLY. I have no further questions.

(Recess.)

Mr. ARCARI. No questions.

Mr. DOLAN. I would like to ask a few more.

RE-DIRECT EXAMINATION

By Mr. DOLAN:

Q. First I would like the record to indicate that Miss Packard has agreed to provide all counsel of record with the three following items: Number one, the Welfare Department policies with respect to the naming of illegitimate children prior to the court cases in Doe vs. Shapiro and Doe vs. Harder.

Two: All communications and replies between the Department and the Department of Health, Education, and Welfare with respect to the Welfare Department policies which led up to the suits of Doe vs. Shapiro and Doe vs. Harder.

99–16 Three: The submittal and replies between the Department and the Department of Health, Education, and Welfare with respect to the policy which came about as a result of 52–440b.

Mr. ARCARI. Let's say this means everything in relation to the submittal, any reply in relation to the submittal.

Mr. DOLAN. Fine.

Mr. ARCARI. Can we put that on the record?

Mr. DOLAN. I think it is. I would like to ask one final question.

You stated that prior to the regulations leading up to the cases of Doe vs. Shapiro and Doe vs. Harder that there was an area of discretion available to the Welfare worker, is that correct?

The WITNESS. That's correct.

Q. Under 52–440b dealing with the compulsion we have been discussing, does anyone in the Welfare Department at any level have the discretion to determine that the mother does not have to so testify?

A. I have to read the law again to make sure which part of the law is the part where the mother must be advised that she is subject to be cited in the court because I think—in using the numbers—I may be confused about what you have been referring to.

99–17 (Discussion off the record.)

The WITNESS. This is the law that says if the mother discloses the name of the father, such mother may be cited to appear before any judge of the Circuit Court and compelled to disclose the name, under oath, but there is no discretion provided for in policy not to follow this direction from the law.

Q. And that would apply to everyone at all levels of authority in the Welfare Department?

A. That's correct.

Mr. DOLAN. Thank you.

Mr. ARCARI. I have no questions.

RE-CROSS EXAMINATION

By Mr. KELLY:

Q. May I ask one or two more questions? What was the policy of the Welfare Department prior to 54–440b, and after the injunctions against conditioning eligibility on the naming of the father of the child?

A. These two things came at different points in time. This particular section of citing the mother to appear before the judge came in 1971. Prior to that, to my knowledge, there was nothing in the law that read just the way this was. It was in 1968 when there was an injunction that said the Welfare

99–18 Department may not make it a condition of eligibility to have the mother name the father. At that point when

the injunction was issued saying that we could not make her name the father, we did not make her name the father as a condition of eligibility. We would ask her if she refused to name the father. If she did, we did nothing, not until the 1971 Legislature said that she may be cited into court and compelled to testify. We then implemented that law, and although we do not cite her in court, the provisions are made and we supply her with an attorney so she may defend herself. We have followed that law since this policy was issued.

Q. Let me clarify one thing: Was there a period after the passage of 52–440b before you implemented the policy when nothing was done if a mother refused?

A. Yes.

Q. And are you also stating that the Welfare Department appoints an attorney to represent the mother of the child?

A. We refer it to an attorney who then is the one who, I imagine, makes the decision of bringing it into court.

Q. But obviously that attorney does not represent the mother?

A. No, I'm sorry, I used the wrong words.

Q. The purpose of that attorney is to act as an advocate of the Welfare Department in the Circuit Court?

99–19 A. No, this is not my understanding. It is not the Welfare Department who is requiring her to go—those are the wrong words.

Q. Compelling her?

A. We are not the ones citing her into court and compelling her to name the father.

Q. Who is?

A. It is the court tha can compel her, that cites her into court and compels her.

Q. Who brings the petition to ask the court to cite her?

A. Not the Welfare Department.

Q. Who?

A. I don't know who does it.

Q. Who pays the attorney to cite the woman in before the court?

A. I think the Welfare Department pays.

Q. So wouldn't it be fair to say then that the Welfare Department employs the attorney as an agent to have the mother cited in before the court?

A. I don't think so. We have to follow the law.

Q. But you pay the bill for the attorney?
A. That's right.
Mr. KELLY. That's all.
By Mr. ARCARI:
99–20 Q. When you pay the bill for the attorneys that you refer this matter to, for the attorney to take action whether or not the mother should be cited before the court, you pay the bill due to the fact that the mother is on welfare assistance, is that right?
A. That's right.
Q. She has no funds of her own except as Welfare provides for her?
A. That's right.
Q. Just to clear this thing up a little bit, is it your understanding that if a mother refuses to disclose the name of the father of a child in question—I'm talking about a mother receiving welfare assistance—the matter is generally referred to an attorney and it is up to him to take action on the law?
A. That's right.
Q. Once the matter is referred to the Circuit Court, if it goes that far, it's up to the Court to decide whether or not the mother should disclose the name of the father?
A. That's right.
(Discussion off the record.)
Q. In reference to Section 52–440b do you have any knowledge whether or not that applies only to welfare recipients?
99–21 A. My understanding is that it applies to everyone, not just recipients.
Q. Therefore, let me know if this is correct or not, a correct understanding on my part of your testimony, that a mother who is not receiving welfare assistance can be referred to the Circuit Court to disclose the name of the father, is that your understanding of 52–440b?
A. Yes.
Q. And to go one step further, in that latter case I just pointed out the Welfare Department would have nothing to do with that type of case because the mother is not on welfare assistance?
A. That's correct.
Q. Since the Welfare Department was placed under an injunction back at approximately 1968 when disclosure of the

father was a condition of eligibility, the Welfare Department has been following the injunction, has been following the law up until the present time, including the law under 52–440b?

A. That's correct.

Q. One more question. After 52–440b came into existence was there a time period that was needed to develop the policy to implement Section 52–440b?

A. Yes, that's right.

Q. We are talking about Welfare policy now.

99–22 A. Yes.

Q. Is that usually the situation, that any law affecting Welfare has to have a period of time in order to develop the policy?

A. That's correct.

Q. To issue it to various districts?

A. That's correct.

Q. And when policy is worked up under a particular law, in other words, under a particular welfare law, in some cases does it involve a substantial period of time?

A. Yes.

Q. Depending on what the problems are?

A. That's correct.

Q. Correct me if I am wrong, but in 1971, I believe that's when Section 52–440b came into existence, was that the same period of time when the flat grant system went into effect?

A. We were working on it. It took a number of months, over a year, and we were working intensively all during the months in 1971 and 1972.

Q. When you say "working on it", you mean working on policy?

A. There were many detailed things that had to be developed to arrive at a flat grant system, and the Policy Section was heavily involved in that.

Q. And did this have a bearing on the work-up or
99–23 development of the Welfare policy under Section 52–440b?

A. That's right.

Q. Specifically could that have some effect as to delay?

A. That, among other developments.

Mr. ARCARI. I have no further questions.

(Discussion off the record.)
Mr. DOLAN. That's all.
(The deposition ended at 3:15 PM.)

CERTIFICATE

99–24 STATE OF CONNECTICUT
County of New Haven, ss:

I, Paul D. Landman, a Notary Public duly commissioned and qualified in and for the County of New Haven, State of Connecticut, do hereby certify that pursuant to notice there came before me on the 4th day of April, 1973, at the offices of the State Welfare Department, 1000 Asylum Street, Hartford, Connecticut, the following named person, to wit, CAROLINE E. PACKARD, who was by me duly sworn to testify to the truth and nothing but the truth of her knowledge touching and concerning the matters in controversy in this cause; that she was thereupon carefully examined upon her oath, and her testimony reduced to writing under my supervision; and that the deposition is a true record of the testimony given by the witness; and that the reading and signing of the deposition were waived by counsel.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto or financially interested in the action.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 17th day of April, 1973.

PAUL D. LANDMAN,
Notary Public.

My commission expires:

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Connecticut State Welfare Department
Social Service Policies—Public Assistance

99-26 [Manual Vol. 1]

ELIGIBILITY PROVISIONS

Child Born Out of Wedlock P-3460

P-3460 *Paternity Proceedings*

Worker's Responsibility in Assisting Mother to Plan for Her Child Following Situations:

1) If she wishes to keep the child
2) If she wishes to place it with a relative
3) If she is to surrender the child for adoption

Mother to Keep Child or Place in Relative Home

Since both parents are responsible for support, proceedings for establishment are initiated.

1. *Mother Alleges Paternity*

a. If the mother is able to discuss her situation freely with the Case Worker and names the father, the worker completes the names of the father and child(ren) on the Form W-161 and has the mother sign the Affirmation of Paternity Section of the form. Her statement is notarized.

The worker then interviews the father and endeavors to obtain his voluntary acknowledgement of paternity (four notarized copies of the form are required).

In some instances the Resource Unit is asked to obtain the Acknowledgement of Paternity. The executed forms are then referred to the Family Relations Division of the Circuit Court by the liaison worker in the Resource Unit.

b. If the father refuses to acknowledge paternity, he is advised that the Department will direct the mother to institute court action. He is also advised that the Welfare Department is legally authorized to institute and pursue proceedings to establish the paternity of any child supported in whole or in part by the Department, if the mother fails to do so.

c. If an Acknowledgement of Paternity is taken prior to the birth of the child, Form W–161 is completed and under the heading "Birth Date", the words "To Be Born on or About _____" are inserted. After the child is born the father is then requested to execute a current acknowledgement of Paternity Form W–161 listing the name and birth date of the child. The mother's signature is secured on the Affirmation of Paternity Section of the current Acknowledgement and the Affirmation of Paternity is then notarized.

Effective: 8–17–71

99–27 3460 *Paternity Proceedings*

3460.1 *Legal Provisions*

1. State law

a. Sec. 52–435a "Complaint" states in part:

> Proceedings to establish paternity of a child born or conceived out of lawful wedlock, including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be instituted by a verified petition of the mother, or expectant mother with summons and order, filed in the circuit court for the circuit in which either she or the putative father resides * * * No such petition shall be brought after three years from the birth of such child, or after three years from cessation of contribution toward support of the child by the putative father, whichever is later; provided the provisions of Section 52–590 of the 1963 supplement to the general statutes shall be applicable to this section * * *

b. Sec. 52–435b "Compelling Mother to Testify" as amended by the 1971 General Assembly, states:

> The mother of any child for whom adjudication of paternity is sought in paternity proceedings shall not be excused from testifying because her evidence may tend to disgrace or incriminate her; nor shall she thereafter

be prosecuted for any criminal act about which (1) she testifies in connection with such proceedings, or (2) she makes any statement prior to such proceedings with respect to the issue of paternity.

c. Sec. 52–435c. "Compelling Putative Father to Testify".

The putative father of any child for whom adjudication of paternity is sought in paternity proceedings shall not be excused from testifying because his evidence may tend to disgrace or incriminate him; nor shall he thereafter be prosecuted for any criminal act about which (1) he testifies in connection with such proceedings or (2) he makes any statement prior to such proceedings with respect to the issue of paternity.

Effective 8–1–72

d. Sec. 52–440a "When State or Town May Maintain Suit"

The state or any town interested in the support of a
99–28 child born out of wedlock may, if the mother neglects to bring such petition, institute such proceedings against the person accused of begetting the child, and may take up and pursue any petition commenced by the mother for the maintenance of the child, if she fails to prosecute to final judgment. Such petitions may be made by the welfare commissioner or the town welfare administrator on information or belief. The mother of the child may be subpoenaed for testimony on the hearing of the petition * * *"

e. Sec. 52–442 "Judgment and Order of Court" states in part:

If the defendant is found guilty, the court shall order him to stand charged with the support and maintenance of such child, with the assistance of the mother if she is financially able, and to pay a certain sum weekly until the child attains the age of eighteen years * * *

f. Sec. 52–440b

(a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of

the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child. (b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

99–29 3460.22 *Responsibility for Support and Establishment of Paternity*

If the mother decides to keep the child or to place him in a relative's home, both parents are responsible for support and proceedings for the establishment of paternity are initiated. Information about the alleged father is obtained from the mother of the child. If he resides in the State, an interview is held to discuss the situation and to secure his Acknowledgement of Paternity.

The mother is encouraged to name the father, by Affirmation of Paternity, under oath and to file a petition to establish paternity and support.

If the mother is unwilling or unable to name the father, she is still eligible for assistance to meet *her own needs, the needs of the child in question, and the needs of any other children in the family*, provided all other eligibility requirements are met; however, if she is *unwilling to name the father*, she is informed that she is subject to be cited to appear before any judge of the Circuit Court, be compelled to name the putative father and to institute an action to establish paternity of the child.

In all situations, assistance is granted promptly when all eligibility requirements are met, whether or not Court action is pending to establish paternity or to secure support.

In situations where the mother names the father, but then is unwilling or neglects to file a petition or to pursue a petition she started, the Department, under Section 52–440a of the Connecticut Statutes, institutes such proceeding. In this in-

stance, the mother may be subpoenaed to testify and treated as a hostile witness.

99–30 *2. Paternity Not Alleged by the Mother*

a. If the mother is unwilling to name the putative father she is informed by the worker that she will be cited to appear before any judge of the Circuit Court and compelled to disclose the name of the putative father and to institute an action to establish the paternity of the child. The worker refers the matter to the Resource worker on a Form W–109. Central Office will provide a list of attorneys to each Resource Unit; referral will be made to an attorney on the list for the purpose of citing the mother to appear before the Court. The fee for this service will be $75 if the mother names the father after the attorney prepares the petition and prior to a court hearing and $150 if the matter goes to a full hearing before the Court. The same fee prevails regardless of the number of children and/or fathers involved. If, after the hearing, the mother decides to cooperate and initiate the paternity action herself, she is of course free to contact an attorney of her own choice. A fee schedule has been established for attorney's fees in connection with paternity proceedings when the mother has named the father (see Index No. 3460.24). If she refuses to cooperate, the Department will initiate a paternity action under the terms of Section 52–440a (see Index No. 3460.1). The same attorney who cited the mother into court will be used to bring the paternity action in such cases.

b. When paternity is established and the Court has determined the amount of support to be paid, payments are made to the Department of Finance and Control and the State Welfare Department meets the continuing needs of the eligible members fully.

c. If the mother is *unable* to name the putative father, this is recorded in the case record.

3. Referral to the Circuit Court

When the hospital cost has been paid by the Department, the worker directs a memorandum to the Medical Payments Section, Central Office, requesting a statement of hospital charges.

The worker then forwards the following to the liaison worker of the Resources Unit by means of a Form W–109 for referral to the Circuit Court in which the mother resides:

a. The executed Form W–161, "Acknowledgement of Paternity and Affirmation of Paternity";

99–31 b. The amount of hospital charges;

c. Form W–326, "Referral to the Family Relations Division of the Circuit Court";

d. The amount of assistance paid for the care of the child in question;

e. Pertinent information regarding the acknowledged father's financial circumstances.

4. *Support Payments*

When paternity is established and the Court has determined the amount of support to be paid, payments are made to the State and the Department meets the continuing need of the eligible members fully.

Effective 8–1–72

[INTERDEPARTMENT MESSAGE]

99–32 To: Intake Unit Supervisors and District Directors, State Welfare Department Central Office.

From: Nicholas Norton, Deputy Commissioner.

Subject: Paternity—Mother Unwilling or Unable to Name the Putative Father.

Attorneys in the community have complained that some of the workers in the Intake Units and in the Income Maintenance Units are requiring as a condition of eligibility that the mother who is unable or unwilling to name the putative father go to the Court to name the father or to discuss support.

It is obvious that the workers are not following policy which has been in effect since March 25, 1970 and which was based on an order of the United States District Court.

The policy is contained in Manual Volume 1, Index No. 460.22 and states:

> If the mother is unwilling or unable to name the father she is still eligible for assistance to meet *her own needs, the needs of the child in question and the needs of any other children* in the family, provided all other eligibility requirements are met.

When the mother is unwilling or unable to name the father, policy contained in P–3919 "Procedure Regarding Support—AFDC Absent Parent Cases" *is not applicable*. The name of the

father *must be known* in order to institute proceedings to secure support.

It is imperative that workers be advised immediately of the requirement that policy be followed.

Please acknowledge receipt of this memorandum and return to the Office of the Deputy Commissioner.

99–33 Interdepartment Message

To: District Directors.
From: Henry Boyle, Deputy Commissioner.
Subject: Paternity—Mother Unwilling or Unable to Name the Father.

Please refer to our memo to the District Directors and Intake Unit Supervisors dated April 12, 1972 on the above subject.

We wish to reemphasize that policy as outlined in Manual Vol. 1, Index No. 3460.22 must be followed. "If the mother is unwilling or unable to name the father, she is still eligible for assistance to meet her own needs, the needs of the child in question and the needs of any other children in the family providing all other eligibility requirements are met; however, if she is unwilling to name the father she is subject to be cited to appear before any judge of the Circuit Court, be compelled to name the putative father and to institute an action to establish paternity of the child".

"In all situations assistance is granted promptly when all eligibility requirements are met, whether or not court action is pending to establish paternity or to secure support".

It is not a condition of eligibility that the mother name the putative father. When the worker notifies the mother she is subject to be cited to appear in Circuit Court and be compelled to name the putative father, the worker *is not to interpret this as a factor of eligibility.*

We are requesting that the workers again be advised that policy *must be followed.*

Please acknowledge receipt of this memorandum and return to the Office of the Deputy Commissioner.

100–1 United States District Court for the District of Connecticut

Civil Action No. 15,579

March 28, 1973

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH, AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Civil Action No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Deposition of John A. Nadolski

100–2 Appearances:

For the interests of the children: Rosen and Dolan; by: David N. Rosen, Esq., Edward J. Dolan, Esq., 265 Church Street, New Haven, Connecticut.

For the Plaintiffs: Raymond Kelly, Esq., 35 Village Street, Rockville, Connecticut.

For the defendants: Michael Anthony Arcari, Esq., 76 Meadow Street, East Hartford, Connecticut.

100–3 *John A. Nadolski*

witness called pursuant to agreement, being first duly sworn in the above cause, testified on his oath as follows:

By Mr. DOLAN:

Q. Mr. Nadolski, could you give us your full name and your address, please?

A. John Anthony Nadolski, 300 Century Hills, Rocky Hill.

Q. And by whom are you employed?

A. By the State of Connecticut, Welfare Department.

Q. And how long have you worked for the Welfare Department?

A. Two and a half years.

Q. In what capacity are you employed by the Welfare Department?

A. Investigator in the Resources Department.

Q. And how long have you been employed in the Resources Department?

A. Two and a half years.

100–4 Q. And in what office?

A. Norwich office.

Q. Now, does your job include securing or attempting to secure information regarding the paternity of illegitimate children of welfare recipients?

A. Yes, it does.

Q. And could you tell us, please, how the existence of such children would come to your attention?

A. It would come one of two ways: at the time of application, through an intake worker; or during an annual review of existing welfare mothers.

Mr. DOLAN. Off the record.

(Discussion off the record.)

Q. Could you tell us, please, with respect to each of these two instances, what the welfare worker, what her function is in terms of relaying this information on to you?

A. All right. Either at the time of the review or at the intake procedures, the welfare worker would ask the mother who the father of the child is. If at that time the applicant or the recipient refuses to name the father, the worker would inform the resource unit to have an investigator enter the case.

Q. Does the welfare worker have an obligation to refer every mother of every illegitimate child to the Resource Department when she will not in fact give the information required?

100–5 A. To the best of my knowledge, yes.

Q. And to the best of your knowledge, does the welfare worker have any discretion in this area?

A. I don't believe so.

Q. Let me cite two specific cases to you, please, and you can answer with respect to them. If a welfare worker at the time of the annual review were to visit the home of a recipient whom she has had an on-going relationship with, and the welfare recipient has had an illegitimate child and states to the worker that she does not in fact know who the father of the child is, and if the welfare worker believes this to be the case, what steps is the welfare worker required to take with respect to that child?

A. She is still required to inform us of it.

Q. And in another situation, if the welfare recipient were to tell the worker that there were very real physical concerns for both her and her child that prevented her from conveying this information, and if the worker felt this was in fact true, what would the worker's obligation be?

A. I would believe they would still have to inform us of it. I don't believe they have the right to make that decision themselves not to take it any further.

Q. Now, let me ask you, with respect to yourself, after these cases have gone through the welfare worker and are then handled by Resources. First, let us include those situa-
100–6 tions. Could you tell us what you do in a normal situation when a case is referred to you in which the mother has not in fact named the father of the child?

A. I would usually enter the interviewing booth and again ask the mother who the father of the child was. If at that time she again refused to name the father, I would inform her that under welfare laws, if she refuses to name the father of the child, we can turn it over to an attorney to cite her to appear before a judge of the Circuit Court; and if at that time she still refuses, she can be liable for a fine of up to $200.00 and a prison sentence up to one year. If she still refuses to name the father of the child, I would turn it over to an attorney.

Q. Now, during this discussion which you would have in a normal situation with the welfare recipient, if she were to tell you that she did not know who the father of the child was, how do you view your function in that situation?

A. It wouldn't change at all. I'd turn it over to an attorney to cite her.

Q. If you in fact believe that the woman does not know who the father of the child is, do you feel that it's within your power to refuse—or to decline to forward the matter to an attorney?

A. Not on my own. We would generally contact the Attorney General's office and tell him that we did think she was
100–7 telling the truth and get his opinion on it.

Q. Have you ever done that in a situation?

A. Not yet, not up to this point.

Q. What makes you feel that you even have the power to do that under the statute?

A. Attorney Higgins told us we could, to call in if we thought that she was telling the truth.

Q. And when did you become aware of the fact that you had this kind of discretion?

A. I think I handled six cases up to that point. He was down the office one time and we were talking about it.

Q. How long ago was this?

A. Over a month ago. I don't remember exactly when.

Q. But less than—let's say, less than three months ago?

A. Yes.

Q. And it was after the initiation of this suit that you first learned of the fact that you had this type of discretion?

A. Well, that I don't know because I'm not sure when the suit actually started. If it was, it was right at the time it was started.

Q. Well, the suit was filed on January 20th. Did this conversation, to the best of your knowledge, take place prior to January 20th or after January 20th, because that's two
100–8 months ago?

A. It would be right around that time. I couldn't swear one way or the other.

Q. Right. Now, let us say that when you are in discussing this kind of a situation with the welfare recipient, if she were to bring facts to your attention which would indicate that she feared for the physical safety of both her and her child, or either her or her child, and you felt from listening to the conversation that here fears were in fact well-founded, do you have or do you feel that you have any kind of discretion in that situation?

A. I imagine I'd do the same thing as what I would do if I believe she didn't know who the father was, and I'd contact the Attorney General's office.

Q. And you feel that you have discretion in this area?

A. I think so, yes.

Q. And let me ask you this: When did you first begin processing cases under this statute?

A. At the end of last year, around December, I believe, December or November.

Q. And as you viewed your function at that time, did you feel that you had any discretion at all?

A. I believe I would take it up with my supervisor. You know, if the same thing were true, I'd take it to my
100-9 supervisor and let him take it to somebody else.

Q. Well then, is it fair to say that you've never had a case where you felt that there was any real question——

A. No.

Q. —about the reason?

A. No.

Mr. DOLAN. Off the record for a minute.

(Discussion off the record.)

Mr. DOLAN. That's all.

By Mr. ROSEN:

Q. Do you know in any other offices of instances in which a mother who refused to give a name did not have her name referred to an attorney for——

A. Not to my knowledge.

Q. You know of no such instances?

A. No.

Q. When you talked to the mothers and informed them of their obligation—strike that. Is it part of your function to find out why a mother has refused to name the father of a child?

A. Yes, I believe so.

Q. You believe it is?

A. Right.

Q. And you discuss that in your interviews also?
100-10 A. Yes.

Q. And in any of your interviews, have you explained to the mother what the consequences for the child would be of her naming the father of the child?

A. At times I would tell here what benefits would come to the child as far as social security or any support we might be able to get from the father.

Q. You say, "at times." Is that something you do at times and not at other times?

A. Most of the times. If she would say flatly, she doesn't want to have anything to do with the father, which has happened on occasion, I probably wouldn't go into it.

Q. If the mother were to make a response like that, would you normally just terminate the interview?

A. I would tell her what the law is and I would terminate the interview.

Q. So is it fair to say that in instances where a mother appears to you initially to be firm or to be adamant about not naming the father, you would then just refer that case to the attorney after apprising her of her obligations?

A. Right.

Mr. ROSEN. Off the record.

(Discussion off the record.)

Mr. ROSEN. No further questions.

100–11 Mr. KELLY. I have a few questions.

CROSS-EXAMINATION

By Mr. KELLY.

Q. Have you ever been involved in any actions against mothers of illegitimate children who are not on welfare?

A. No.

Q. Does your position as a resource worker give you the authority to use the law 52–440b against non-welfare recipients?

A. I don't believe so. We don't have any contact with non-welfare recipients.

Q. You testified earlier that you explained some benefits that may accrue to a child to the mother.

A. Correct.

Q. How long have you been doing it?

A. How long have I been doing what?

Q. Explaining the benefits.

A. Since this action started.

Q. Since this lawsuit started?

A. No, since we've been citing the mothers.

Q. So back in—did you testify earlier that you started these——

A. In November or December.

Q. November or December of 1972?

100–12 A. Right.

Q. And from that time to the present——

A. Ever since we've been citing them, I've been telling them that.

Q. Is there a departmental regulation or memo that explains your task in this situation?

A. I don't believe so.

Q. This was then an oral directive that you got from your supervisor?

A. It might have been written. I don't remember if there was a written memo.

Q. And you also testified that you never decided not to turn a case to a private attorney?

A. Correct.

Q. How many cases have you processed?

A. About two dozen.

Mr. KELLY. I have no further questions.

CROSS-EXAMINATION

By Mr. ARCARI:

Q. Aside from turning the case over to a private attorney—it is a private attorney that you turn the case over to?

A. Correct.

Q. And this is, as far as you know, pursuant to law or

100–13 statute?

A. Correct.

Q. Now, aside from that action that you take, turning the matter over to a private attorney, do you take any action against the welfare recipient such as terminating her assistance or a recommendation to that effect?

A. No, sir.

Q. Any punitive action or penalty or anything like that?

A. No.

Q. And I believe you testified that once there is an indication that a welfare recipient mother—she's quite adamant that she doesn't want to disclose the name, I think you indicated you terminate the interview?

A. Yes.

Q. Now, do you hold just that one interview and then you refer the case over to a private attorney?

A. Yes.

Q. My point is, you don't keep asking her to come back over and over again?

A. No.

Q. I think you indicated that you referred twelve cases over to a private attorney.

A. Approximately two dozen.

Q. Two dozen, excuse me. Have you had any cases
100–14 where the recipient mother has voluntarily given you the name of the putative father involved?

A. About fifty percent of them have given it to the attorney. They've never come back to me directly to give it to me.

Q. That's the cases you referred to a private attorney?

A. Right.

Q. How about cases where you have an interview but, in other words, where the mother does disclose the name to you?

A. Oh, at the time of the interview?

Q. Yes.

A. Oh, yes.

Q. Do you have any idea—your best guess?

A. I would say my best guess would be about a dozen.

Q. About a dozen cases——

A. Where the mother has volunteered the name of the father.

Q. This is after you explained the benefits to the child?

A. Yes, either the benefits or the law that we're operating under.

Q. Out of those two dozen cases that you referred out for action, I think you indicated that fifty percent of the mothers have named the putative father involved?

A. Approximately, yes.

Q. Do you have any knowledge as to whether or not
100–15 any acknowledgements of paternity were executed?

A. Well, I think there is one that I'm working on that the father has also signed the paternity papers. The rest of them are in the process of either paternity actions——

Q. Or possibility of executing an acknowledgement of paternity?

A. Right.

Q. Now, does anyone else talk to the recipient mother during the time of this interview? Is this solely something you take care of?

A. You mean personally?

Q. Yes.

A. No, it would be any of the investigators in the office who would be called in.

Q. But once you've opened an interview with the recipient mother, somebody else doesn't come in and sit down?

A. No.

Q. This is a private and confidential——

A. Right. The social worker would be present and myself.

Q. Now, how does the welfare recipient mother get to your office?

A. At the time of application, you mean—physically or——

Q. No. I mean in reference to—in other words, let me ask you a question: Do you notify her to come in and see
100–16 you in reference to the child in question?

A. I can't really answer that because the original contact is made through the social worker.

Q. I see. That's something the social worker does?

A. Usually when we get involved, they're in the office for the interview.

Q. I see. I understand. Let me ask you this: You indicated more than once that when you explain the situation to the recipient mother why she should disclose the name, you indicated that you explain the benefits to the child.

A. Right.

Q. Other than explaining what the law is, do you—I'll withdraw the question. What you've given us today in reference to the interview with the recipient mother, is that your sole function in this type of a case?

A. Yes, I think so. I'm not sure what you mean.

Q. Can you let us generally what were some of the reasons why—I'll withdraw the question. Let me ask you this one question: You have no reason to conduct an interview or pursue anything in reference to Section 52–440b as to the mother that's not on welfare assistance——

A. No.

Q. —is that correct? Let me ask you this: Those two dozen cases that you've referred to a private attorney to take
100–17 further action under the law, do you know whether or not—I'll withdraw the question.

Mr. ARCARI. I think that covers it.

Mr. ROSEN. I have about two more questions.

REDIRECT EXAMINATION

By Mr. ROSEN:

Q. You are not a social case worker——

A. No.

Q. —is that right? And you have not had social case work training or experience?

A. No.

Q. Your involvement is strictly in the financial aspect of it?

A. I don't know if it's just financial but it's the resource aspect. We cover a lot more than just finances. We don't get involved in any social work or along that line, if that's what you mean.

Mr. ROSEN. OK.

Mr. KELLY. I have a few more questions.

RECROSS-EXAMINATION

By Mr. KELLY:

Q. Mr. Arcari asked you before exactly what your function was as a resource worker—I think that was his question—and you replied that you handled these type of cases concerning naming the putative father. Wasn't that true?

100–18

A. Yes.

Q. Is your only function as a resource worker to determine the names of putative fathers?

A. No.

Q. You have other functions?

A. Yes.

Q. Okay. I have just one more question. If a woman came in to you and gave the name of the father but said she feared for her physical safety and the safety of her child and therefore wouldn't sign the acknowledgement——

A. Right.

Q. —what would you do with that case?

A. I'd refer it to my supervisor and to the Attorney General, see what action they want to take.

Q. You wouldn't refer it to a private attorney then?

A. Not before I contacted somebody else in the department.

Mr. KELLY. Okay.

Mr. ROSEN. That's all. Thank you.

(The deposition was adjourned at 1:50 PM.)

[CHILDREN'S EXHIBIT 4, CASE NO. 15,579, NO. 15,589 CIV., APRIL 30, 1973]

United States District Court for the District of Connecticut

101–1 United States District Court for the District of Connecticut

Civil Action No. 15,579

DONNA DOE, LINDA LOE, REBA ROE, SALLY SMITH, AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

March 28, 1973

Civil Action No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Deposition of Joseph Mancini

101–2 Appearances:

For the interests of the children: Rosen and Dolan; by: David N. Rosen, Esq., Edward J. Dolan, Esq., 265 Church Street, New Haven, Connecticut.

For the plaintiffs: Raymond Kelly, Esq., 35 Village Street, Rockville, Connecticut; Frank Cochran, Esq.

For the defendants: Michael Anthony Arcari, Esq., 76 Meadow Street, East Hartford, Connecticut.

101–3 *STIPULATIONS*

The reading and signing of the deposition are waived; and the balance of the Federal Rules apply. Objections to notice and proof of the authority of the Notary Public are waived.

Joseph Mancini witness called pursuant to agreement, being first duly sworn in the above cause, testified on his oath as follows:

DIRECT EXAMINATION

By Mr. DOLAN:

Q. Would you state your full name and address, please?

A. Joseph Mancini, 247 Townsend Avenue. That's in New Haven.

Q. By whom are you employed, Mr. Mancini?

A. State of Connecticut Welfare Department.

Q. How long have you been employed by the Welfare Department?

A. It will be five years in July.

Q. In what capacity do you work at the Welfare Department at the present time?

A. The classification is welfare investigator.

Q. And do you work in the resource unit?

101–4 A. Yes, I do.

Q. And how long have you worked in that capacity?

A. Over two years.

Q. And does your job involve securing or attempting to secure information regarding the paternity of illegitimate children of welfare recipients?

A. That's one of my jobs.

Q. Could you tell us, please, briefly, how the existence of such children would come to your attention?

A. Well, there's two different ways. If the person is coming on assistance, the first time she's applying for assistance, and there's a child who is of a union which isn't her husband's, or if she's not married and she's referred from the intake unit over to us, well, she tells who—acknowledges who the father is and signs a notarization—the only part I get involved in is notarizing it—and if she volunteers to go to Family Relations Court—it has to be voluntary.

Q. And what is the other situation whereby you would become involved?

A. The other situation would be if she's on welfare and has a child.

Q. And how would that case come to your attention?

A. When she calls up to have an additional member added onto her budget, we would be notified. And then we

101–5 would do the same thing again. We'd ask if she would sign an affidavit and we'd proceed that way. I say there's two ways: if she's already on assistance, and has a child in addition to her family, which her husband did not father, or if she's not married, which is an O.W. child.

Q. Now, is it the practice in New Haven that when one of these situations occurs, does the original person who is either taking the intake interview or who is the worker, begin any inquiries to determine whether or not the person is willing to name the father, or is all of that taken care of by the resource unit?

A. No. The initial question is asked by the intake unit. In filling out their form, on their form the question is there, "Who is the father of the child?" It's on the form.

Q. To the best of your knowledge, does the welfare worker who would be in contact with the recipient prior to your contact with the recipient, does that worker have any discretion to determine when to refer such cases to you? In other words, if the welfare worker already had an on-going relationship with the welfare recipient and the welfare recipient had a child, and if the welfare worker talked to her and she stated that she did not in fact know who the father of the child was, is the welfare worker empowered with the discretion to leave the matter right there or does that kind of a matter have to be referred

101–6 over to you?

A. It's not referred over at that time. In other words, it does not block her being accepted for assistance. The only time we get referred is after she's granted on a situation like that.

Q. No. But assuming she's on assistance, if that kind of a situation arises where the welfare worker believes that the mother does not in fact know who the father of the child is, what occurs in that situation vis-a-vis you?

A. She does not know or does not want to name? That's two different things.

Q. I'm saying if she tells the welfare worker she doesn't know who the father is.

A. The welfare worker would refer it over with his information.

Q. And what would happen in that situation as far as you're concerned? If you were to interview her then and ask her about

this, and you determined, after talking to her, that you believed then?

A. Well, if I actually believed the woman, if I had real reason to believe her, then it would possibly be left for a next review where it would be asked again. But if there's reason to doubt, we would follow it up.

Q. By "follow it up" what do you mean?

101–7 A. Well she'd be referred—one of our attorneys would contact her to ask her the same question.

Q. Let's take another example. Let's assume again with respect to the welfare worker who has an on-going relationship and has had an on-going relationship with the welfare recipient, let's assume that that worker in discussing the question of the illegitimate child with the mother learns from the mother that she will not provide the name of the father because she fears for her own physical well-being and fears for the physical well-being of the child because she's been threatened in fact by the putative father. If the welfare worker in that situation determines that the fears of the mother are in fact well-founded, does the welfare worker have any discretion in that kind of a situation?

A. Can I rephrase the question the way I understand you're saying it?

Q. Fine.

A. I understand you're saying if the welfare worker is told by the client that if she named the father, she'd be physically abused—is that what you're saying?

Mr. ROSEN. Just off the record for a minute.

(Following the discussion off the record, the answer was read.)

Q. Right.

A. She told the worker this?

101–8 Q. Right.

A. And you want to know what we'd do in a situation like this?

Q. I want to know, does the welfare worker in that situation have the discretion to end the matter right there?

A. No.

Q. What would happen in that situation?

A. She would send the information over to the research unit.

Q. And then if you were to then interview the person and she told you the same information and in effect you believed

what she was saying, do you feel that you have any discretion in that situation?

A. No. I still would have to follow it through.

Q. And what do you mean by "follow it through"?

A. If she would not name, if she refused to name the father, with the belief that I think she knows but she refused to name him, I would have to have her cited under the statute.

Q. Do you feel there's any set of circumstances whereby you have the discretion, after discussing the situation with the mother, to decline to forward this information to an attorney if she will not in fact name the father?

A. No, because—off the record.

(Following discussion off the record the question was 101-9 read.)

A. You're still talking about the abuse end of it now? You're still talking about if she refuses to name because she's in fear of the man's punishment?

Q. I'm saying, in any set of circumstances where the woman knows who the father is but tells you that because of some other reason—and I'm not saying what the reason would be—but if she said that there was some other reason why she could not tell you who the father of that child is, do you feel that you have the authority to, by yourself, to consider that reason legitimate and to terminate the matter there without referring it to an attorney?

A. No, for the simple reason that because of the situation we have in New Haven and the attorneys—I've worked with the attorneys in a number of paternities they've handled—that if a third person, which is not welfare, contacts the woman, the results in my opinion could still be the same, but the third person either confirms our opinion that this woman does not know or refuses to name, and why and what the reason is for it.

We've also found out that when a third person attorney gets involved, where she's not talking to a social worker and she's not talking to a resource worker and she's not hampered by being in an office where she's waited two hours, that sometimes the story is the same and sometimes it's different. And

101–10 the situation I have in New Haven, the attorneys that I have, that I work with, know this, and by dealing with the client and being a third person which is basically out of welfare, they've had different results or their opinion has been

the same as ours. And then we would decide then whether we should pursue or not pursue.

Q. Could you give us an example, let's say, of a set of circumstances other than where there's just a determination of whether or not the woman does know who the father is? Excluding that situation, could you give us an example of any other situation where, after all three of these parties have evaluated the circumstances, they have decided not to pursue such an action?

A. Yes. Of course, I can't give you names but we had a girl who had a child, an O.W. child, and she stated that she had relations with more than one person during the time she could be impregnated. In fact, she lives in a commune. Now, this information was at first received by the intake worker, forwarded over to the Research Department, and then forwarded to an attorney to contact her to ask her why she would not name the father. And the girl came back with the same information, and we did not pursue it farther than that because we believed that she did live in a commune and she had relations with more than one person and she could not name the father.

Q. But that was a situation where she could not in 101–11 fact name the father.

A. She could have given us six names.

Q. But she was incapable of naming the father because she could only narrow it down to five or six people. What I'm asking you, has there ever been a case in New Haven that you know of, or anywhere else that you know of, where the mother has refused to name the father for reasons other than the fact that she wasn't sure who the father is; in other words, where the mother said, "I will not name the father because I fear for my safety and I fear for the safety of my child"? If that situation were to occur, do you know of any situation where, after discussing the circumstances and feeling that her fears were well-grounded, that the department has declined to pursue the action?

A. In the number of cases I handled, which is pretty close to over 200, I've never come across one yet where the woman would not name for that reason.

Q. Well, other than the fact that they don't in fact know, or they claim they don't in fact know who the father actually is, what are other reasons that you've heard in terms of why mothers will not name the father of the child?

A. The reasons that the woman gives or has given to the Welfare Department—when I say "Welfare Department," I mean the intake worker and the resource worker—is basically,
"I don't want to name him," and we do not pursue it
101–12 much more than that. If she wants to volunteer the
reason why she doesn't want to name him, we accept it. But we don't pursue it to the point and say, "Why don't you want to name him?" In order to get welfare, she doesn't have to name him. So we're mostly concerned—what we do in talking to her in the Welfare Department is try to get her to voluntarily name the person. We explain to her what benefits would come of this in the point where her child might have social security or whatever they might have from the putative father, but we do not pursue her reasons, what her reasons are why she won't name him, unless she volunteers it.

Q. But now we're in a situation where somebody can go to jail for this——

Mr. ARCARI. I'm going to object. May I go off the record for a second?

Mr. DOLAN. Yes.

(Discussion off the record.)

By Mr. ROSEN:

Q. Do you know of any situations in which you and the attorney felt that a woman knew who the father of the child was, but you decided not to require her to name the father?

A. There's been a few cases where the child has been born out of the state and we knew that even if we received the father's name, it would be almost impossible to go any further because the father would be out of the area.

101–13 Q. That's the only situation you've come across in your experience?

A. Right.

Q. And about how many cases does that encompass?

A. Are you referring to paternities? Or are you referring to citing?

Q. Well, both.

A. I couldn't give you—the exact amount that we don't follow through because of failure to name?

Q. Yes.

A. Very few. I couldn't give you a number.

Q. And how many paternity cases are you talking about—your general experience?

A. I get approximately anywhere from 150 to 200 referrals on O.W.'s a month. Some of these are updated previous, but I handle about 200 a month referrals on paternity actions, that they're named, failed to name, and what have you.

Q. And the only ones you do not pursue, including citing the mother as part of the pursuit, would be those in which the father is out of state and immune from process?

A. Now, you say "pursue." Now, we're going back. I still use the three: The initial intake—I take the evaluation of the person who took the intake; my evaluation if I see the client—now, I don't always see these clients because
101-14 there are other resource workers—and then the evaluation of the attorney. And if the woman is telling the truth, we all arrive at the same evaluation.

Q. So every one is referred to the attorney?

A. Every one where the child is within the statute of limitations, I refer them.

Q. And the only cases you know of where the attorney, in consultation with your office, has not pursued the matter further, are cases where the father would be immune from process?

A. That, and where he feels that a woman cannot—we feel the woman cannot name the person, or if she can name the person and the whereabouts are unknown.

Q. Those are the only situations?

A. The only three.

Mr. DOLAN. Off the record.

(Discussion off the record.)

Mr. ROSEN. I'm through.

Mr. DOLAN. I'm through too.

CROSS-EXAMINATION

By Mr. ARCARI:

Q. Is it one of your duties to get involved in the collection of support of minor children born out of wedlock?

A. No, other than the necessary referrals, if I had a
101-15 place to refer it to. If the woman agrees to go down to Family Relations Court, because we know that the only time a woman is required to go to Family Relations Court is if the father is adjudicated or acknowledged——

Q. Let me back up for a second just to get this on the record. You take no punitive action against the welfare mother if she

elects not to disclose the name of the putative father; that is, you don't cut her off from assistance or penalize her or anything like that?

A. No.

Q. Once she indicates that she desires not to disclose the name to you, you end your interview, I take it?

A. Our resource interview or the intake interview?

Q. Well, your interview, the one you're having with the mother to secure the information.

A. If she refuses to name?

Q. Yes.

A. Then I explain to her the benefits that she would have, but of course she's never told she has to name him. But then I tell her what we're going to do after that so she's aware. I say, "I wouldn't want you to leave here and all of a sudden you're surprised at what we're going to do." I explain what we're going to do in each step.

Q. All right. Let me clear up another aspect of this.

101–16 You've indicated that you refer the matter to attorneys. That appeared several times, that you refer the matter for the attorney to take some action. Now, this is action pursuant to what—52–440b, the statute involved where they can cite the mother before the Circuit Court? Is that your understanding?

A. Yes. I ask the attorney to proceed with the citing in.

Q. And then it becomes a question for the law to settle from that point?

A. Yes.

Mr. DOLAN. Off the record.

(Discussion off the record.)

Q. I think you indicated before that when welfare recipients come in to talk with you about the possibility of finding out who the putative father of a child in question is, this is all done on a voluntary basis. Of the cases you handle, do you have any idea what percentage of mothers voluntarily give you the names of the putative fathers?

A. The percentage?

Q. Yes.

A. Give them to me?

Q. Yes, your best guess.

A. To me?

Q. Yes.

A. About ten percent.

101–17 Q. Ten percent?

A. To me.

Q. All right, let me clarify it then. When you say to you, are you implying they may give it to someone else in the Welfare Department?

A. Well, if they don't give it to the intake worker, by the time they come to me, they don't give it to me. The intake worker already asked, so I really don't get that big of a reaction because I'm the second person and it's already been explained to her that she doesn't have to name him.

Q. Now, going back to the intake worker, do you have knowledge what percentage of the women coming in under those circumstances would disclose the name voluntarily to the intake worker?

A. About seventy percent.

Q. Do the women who disclose the names of the putative father voluntarily, do they ever voluntarily give you any reason why they're making that disclosure? I don't want to know any particular case but——.

A. Where they've supplied the name?

Q. When they've given you the name of the putative father, have they voluntarily given you any reasons why they're giving this information to you, why they elected to voluntarily disclose this?

101–18 A. Most of the names we receive, where the woman gives us the name of the father, she usually follows it up with, "Whereabouts unknown." She doesn't know where he is.

Q. Aside from that, did you find any particular reason why, or reasons, why a woman voluntarily wants to give the name——

Mr. Arcari. Let me go off the record for a minute.

(Discussion off the record.)

Q. Do you understand my question now?

A. Yes. The main reason they help us with the name is because they know the man should have an obligation. The obligation sometimes isn't always for support. It's the obligation to them. In other words, the mother feels that the man who is the father of the child owes an obligation to her, that he should stay around and marry her or he should be there with her, not

just leave her with a baby. The state is not always her primary—she really doesn't care much about the state.

Q. But that obligation—did you ever form an impression that that obligation excluded the child?

A. Yes, it does. It is more her own discretion—more concerned about herself than the child. Off the record.

(Discussion off the record.)

Q. In reference to those women who, after they've refused to disclose the name of the putative father to you, and then upon you explaining to them that they're subject to
101–19 the law and they could be cited in to appear before the Circuit Court for the court to question, do you have any knowledge, your best estimate, as to what number of mothers, under those circumstances, will disclose the name once this becomes known or once they're brought in to court?

A. About 90 percent of the mothers that the attorney has contacted to tell her that she would have to appear before a judge and tell the judge who the father is or why she would not name the father.

Q. You're saying that 90 percent of the mothers under those circumstances disclose the name of the putative father?

A. To the attorney without going in front of the judge. I haven't had one yet that went in front of a judge yet.

Q. In other words, after becoming aware of the law which is explained to them, they voluntarily disclosed it to you?

A. They volunteered the name, or they proved to the other attorney and our third person that they really don't know who the father is. If they know, they name it by that time.

Q. You made mention of the fact that in trying to find out who the putative father is, you explain some benefits to the mother involved. That percentage that do disclose the names—I'll withdraw that question. Let me ask you this: Generally, what percentage of mothers, your best estimate, will disclose the name of the father, the putative father of the child
101–20 in question, after you explain the benefits to the child?

A. Very few. As I said to you before, I don't have any——

Q. You're talking about in reference to the ten percent that do disclose?

A. Right.

Q. You're not talking about the 70 percent with the intake——

A. In the interview, the initial interview.

Q. Okay, that clarifies it.

Mr. ARCARI. I have no further questions.

Mr. COCHRAN. I have a few questions.

CROSS-EXAMINATION

By Mr. COCHRAN:

Q. When you've had an interview with someone who has been referred to you by the social worker, by the intake, and have made a decision either to refer it to an attorney or not, who within the Welfare Department would review your decision, if anybody?

Mr. ROSEN. He said he referred them all.

Mr. COCHRAN. Well, he said he referred them all with some exceptions, which he enumerated three.

A. I said I referred them all unless—I referred them all except probably—I refer them all.

Q. You refer them all. All right. Now, do you per-
101-21 sonally contact every mother in this circumstance who has refused to tell the intake worker or the social worker?

A. No.

Q. Are there other people with the same position you have who would do that?

A. No, because sometimes the intake worker or the review worker—the worker who is not associated with resource doesn't refer them until—when they come in, they should get ahold of resource. They don't. So the interviewer is not present at all times.

Q. So would there be cases which would be referred to a local attorney for citation under Section 52-440b without going through you?

A. There again, I have to explain, because the association I have with attorneys in New Haven, they just don't start citing them unless they contact the client. They wouldn't cite a mother into court without first contacting her.

Q. Okay. What I want to know is whether any cases in New Haven would be referred to those attorneys without going through you.

A. Without me personally interviewing the client, yes.

Q. Right.

A. But they all have to go through me inasmuch as I have to get the referral over. The attorney doesn't get it
101–22 directly from anybody else but me. But not in all circumstances have I had the opportunity to interview the client.

Q. What instructions would you normally give an attorney, when you're referring such a case to him, as to how to proceed?

A. The name of the client of course, the address, phone number if we still have it, the name of the child and any other—that's basically it, unless we had some information from some other source as to who the father may be.

Q. You would give him that information?

A. Right.

Q. Would you give him any instructions as to under what circumstances to confer with you on whether the action should proceed or whether it should be dropped?

A. The only instructions we have, that over the years we've worked out or we have, is they will contact the client before they proceed.

Q. Now, if there were an instance in which a welfare recipient were threatened with being discontinued from A.F.D.C. by a worker—were threatened with either being discontinued or not being put on A.F.D.C. by an intake worker or a social worker, would that come to your attention usually?

A. I know, and I can state for a fact, there's no intake worker that ever would make a statement like that in New Haven. These people are specially trained.

101–23 Q. So you know of no instance in which that's happened is what you're saying, is that correct?

A. I know, and I would say there's no instance where it would happen.

Q. Okay. Now, have there been any cases that you know of in which citations have been served and the women have appeared in court and been put on the stand, and either disclosed at that point or refused to disclose at that point?

A. None of the cases I know of have yet gone as far as the woman being put on the stand. I had one go as far as she talked to the attorney in the judge's chambers, but never where she has gone as far as the stand.

Q. About how many citations have been filed in the Sixth Circuit Court in New Haven, do you know?

A. There's only been six that I know of that have gone that far.

Q. As far as being filed in court?

A. As far as going to court.

Q. Has anyone ever told you, any recipient who had refused to disclose the name, ever told you that the reason she didn't want to disclose the name of the father was that she was afraid the father might inflict any physical harm on the child?

A. No.

Q. I think you testified before that none had ever said
101–24 that as to harm to herself, is that correct?

A. No. I stated before that I never had a client yet that I talked to that told me the reason she was not naming him was because of that reason. I stated before that most clients give me the name of the father because they're more concerned about themselves than the child.

Q. When you say that, do you mean they're more concerned with the money they can get from the father for the child support or other benefits they could get?

A. No, more concerned because they are left alone with the burden, and the man—they thought the man loved them and he left them, or he is not living up to what she expected him to live up to. But they're not really concerned about what the state's expenses are for support. This is not their main reason why they named the father. What the state has to pay, they're not concerned.

Q. Do you recall any mother in this circumstance telling you that she didn't want to name the father because she thought there would be psychological or emotional damage to the child as a result of her naming the father?

A. Never.

Mr. COCHRAN. I don't think I have anything further.

Mr. KELLY. I may have one question.

Mr. COCHRAN. I do have one other.

101–25 Mr. KELLY. You go first.

Mr. COCHRAN. I'm sorry.

By Mr. COCHRAN (continued):

Q. About what percentage would you say don't give any reason, of the ones you talked to, don't give any reason for not wanting to name the father?

A. Most of them. If you want to figure it, ninety percent.
Q. A very high percentage?
A. Very high because they say they don't want to name them.
Mr. DOLAN. I'd like to ask a related question, please.

REDIRECT EXAMINATION

By Mr. DOLAN:

Q. Could you just tell us briefly what takes place in a normal situation when you're discussing this kind of an issue with the client, and just explain to us briefly as if we were in one of the cubicles at the Welfare Department how you would go through this procedure?

A. Okay. A woman comes in and applies for assistance—okay?—and when I get to the part of who is the father of the child, she states that she doesn't want to name him—excuse me, you want me to go on, on this basis?

101–26 Q. Yes.

A. Then the intake worker would call one of the resource workers in to discuss it. Then we would say, "The reason we're discussing this is because we would like to know the father of the child, but this does not affect your eligibility for A.D.C. The worker here, Mrs. Jones, is your A.D.C. intake worker and she's going to proceed with your application no matter how our conversation comes out," okay?

Then I would state to her that the reason we would like to have the father's name is because it would be beneficial for her child inasmuch as if the person—well, as the adjudicated father or the acknowledged father, the child has rights to the father's estate, be it social security or whatever it might be afterwards, and that also if we could get the adjudication or the acknowledgement of the father, we could ask the gentleman for support, because we feel that he's responsible for support of this child. He fathered the child, we'd like him to support it. But, again, if we adjudicated the father and he acknowledged that he could not pay support, "it does not affect your welfare. The only time would be if he supported a sufficient amount where you would be over welfare standards and the money would go directly to you." But it would not affect her welfare grant on what he would support.

101–27 We do not try to convey to them that if the guy only gives $5.00 a week, she's going to be off welfare.

We convey to her that she's allowed to have so much money from the state for how many children she has, and the only reason we want this gentleman for is to help pay the expenses, or all if it's ever possible.

But through our general experience, the men involved, once they are either acknowledged or adjudicated the father, they usually don't pay enough support to take the person off welfare. We convey that. We don't want them to be afraid that we're going to take them and leave them high and dry. We're not going to hurt their A.D.C. grant, we're not going to affect their assistance.

And then I pursue and ask the question, "Who is the father of the child?" and they say, "Well, I don't want to tell you." I say, "Okay, you don't have to tell me, but I want to explain to you that the Welfare Department feels that we should go a little bit further to obtain the name of this father, and if you feel that you don't want to name the father, we'll refer it to an attorney to proceed with asking you to come to court"—I don't use the word "cite" because they don't understand—"we'll ask you to come to court and you explain to a judge why you don't want to name the father."

And we'll do this: "Now, if you don't want to, you
101–28 don't have to, but I want to explain to you if you do get a phone call or you get contact or you get a letter from one of our attorneys, you'll understand that the Welfare Department is proceeding. If you get a letter from an attorney"—.

Q. Do you explain at that point that there are penalties involved if she's called to court, and that she faces the possibility of going to jail for her failure to make this kind of a disclosure, or do you feel that that is the function of the attorney?

A. It's not the function of me because I really don't know if she's going to get penalized.

Q. No, but I mean, do you inform her that there is in fact a penalty?

A. I probably will say it like this: "The judge is going to ask you to name the father, and if you refuse he can make you name the father or bring"—see, I don't really know if they're going to find him. I don't want to scare the woman where she's going to give me the name. I don't think I have the right to do that.

Q. So you don't inform them that there is a possible penalty?
A. No.
Q. Okay.
A. Because what happens in the welfare office—I still feel sorry that they're embarrassed coming in to apply for
101–29 welfare. I don't want to embarrass them any more than explain to them what we're going to do.
Mr. DOLAN. That's all.

CROSS-EXAMINATION

By Mr. KELLY:

Q. If a woman gives you the name of the putative father but does not want to sign the acknowledgement form, what will you do with a case like that?

A. If she gives me the name of the father but will not sign the acknowledgement form, and we basically believe that is the putative father, then we assign it to an attorney and he'll bring an action to the Commissioner of Welfare, and he'll go ahead and see if he can find the man.

Excuse me, I would also explain what we're going to do. I hope you realize that I—every time I do one of these things I sit there and talk to the woman and explain—I ask them immediately, "You understand what's going to happen?" because I don't want them to come back later on and say—because this is a typical example of every day welfare people—"Nobody ever told me." This is off the record.

(Discussion off the record.)

Q. Mr. Mancini, would the women who named the
101–30 father be compelled to appear in court at the time of the paternity proceeding?

A. Yes, she'd be subpoenaed.
Q. And she would be——
A. She would be treated as a hostile witness.
Q. And she'd be forced to acknowledge on the stand that she was the mother of an illegitimate child, in public?
A. She'd be treated as a hostile witness. She'd be asked these questions and be treated as a hostile witness.
Q. But she'd be asked——
A. She'd be asked if she's the mother of the child.
Q. Of the illegitimate child?
A. Of the child in question, yes.
Mr. KELLY. That's all I have.

By Mr. ROSEN.

Q. Can you explain what this document is?

Mr. ARCARI. I'd like to object because that form you have is a fee form for attorneys initiating paternity actions. I don't see what that has to do with his aspect of it. The witness has already indicated this is the fee schedule, and it's not relevant. Off the record.

(Discussion off the record.)

101–31 Mr. ROSEN. We'll put it in and you put your objections on the record, and they're preserved if you put them on the record.

Q. Mr. Mancini, would you give me the document that you have?

A. (Witness handed document to Mr. Rosen.)

Mr. ROSEN. Would you mark this as——

Mr. ARCARI. Would you identify it first?

Mr. ROSEN. I'll just have it marked for identification.

(The document referred to was received and marked Children's Exhibit 1 for Identification.)

Q. Mr. Mancini, would you examine this Exhibit 1 for Identification and explain what this piece of paper is? (Document handed to witness.)

A. This piece of paper is a state form, W–870, edition 11/72.

Q. And what is the purpose of that form?

A. The purpose is to explain to the attorney that if he's assigned an action and he proceeds with it, what his fee schedule may be.

Mr. ROSEN. We'll offer that as our Exhibit 1.

Mr. ACARI. May I object to the offer as being not relevant to these proceedings? And I would also like to ask a

101–32 question of the witness in reference to that document so we may clarify the situation.

In reference to Exhibit 1, Mr. Mancini, that fee schedule, is that used as a fee schedule to pay attorneys for citing a welfare recipient mother to disclose the name of the putative father in Circuit Court?

The WITNESS. I've never used it.

Mr. ARCARI. But is that the fee schedule for that?

The WITNESS. This is the fee schedule that they could put in a bill for services, and then it's up to the discretion of Hartford if they want to pay that fee schedule.

Mr. ARCARI. But this is what—in reference to paternity actions, or is it reference to citing a mother before the Circuit Court to disclose——

The WITNESS. Citing a mother

Mr. ARCARI. This form is? This is the fee schedule?

The WITNESS. Yes.

Mr. ARCARI. Let me make sure I understand now. If a mother is cited in before the Circuit Court to disclose the name of the putative father, you use this form, the fee schedule form that we're talking about now, Exhibit 1, to pay the attorney? In other words, he's allowed to charge his fees in accordance with that schedule for citing in the mother?

101–33 A. It depends on what step he's in. Yes, this is generally what the state puts a limitation on what he can charge.

Mr. ARCARI. If he cites in a mother?

The WITNESS. If he cites in a mother, right.

Mr. ARCARI. That's if he cites in a mother who refuses to disclose the name of the putative father?

The WITNESS. Right, refuses the name.

Mr. ARCARI. Then I see no reason why I should object, and I'll withdraw the objection. I was under a different impression.

(The document referred to, previously marked Childrens' Exhibit 1 for Identification, was received in evidence and marked Children's Exhibit 1.)

Q. (By Mr. Rosen) What is your role with regard to paying the attorneys who do this work for the department?

A. The attorneys, they bill through our D.O., and then I just refer it up to Hartford——

Q. Do you have any——

A. —with the necessary papers. In other words, they can't put in for adjudication unless they have a copy of the judgment. I make sure everything is in order before I send it up. I send everything I'm supposed to send. I sort of get the packet together and mail it up.

101–34 Q. Do you have anything to do with determining the amount of payment?

A. No.

Mr. ROSEN. That's all.

By Mr. DOLAN:

Q. Are these paid on a straight contingency? In effect, if a person works on a case and does not reach a successful determination, does he still get paid?

A. In most cases they don't get paid unless they actually can prove that they—see, this goes again with the attorneys that I have that I work with. If it's a seven or eight dollar sheriff's fee, they don't even charge the state because it doesn't pay. They've been doing it for years and they don't burden the state with a small thing like that.

Q. What I'm getting at is: Do the attorneys get paid for these, if they do not come to a successful determination?

A. No.

Q. So that it is very much in the financial interest of the attorneys in question to pursue these matters because if they don't successfully pursue them, they don't get paid?

A. They could go out and spend money and continue to pursue them but they prefer to have all the information. If they're going to cite a woman in and they talk to her and, in other words, if the whereabouts are unknown and like that, 101–35 they know it's foolish to pursue it and they won't.

Q. But my question is: Do they get paid anything for that kind of a service?

A. No. I tell them, "Don't burden the state with paying anything."

By Mr. ROSEN:

Q. Which case is the penny ante case?

A. In other words, they know, or know enough, that they don't just start sending papers all over the place and say later on, "Well, I served this and I served this," and they served the wrong person and they want to get paid for it. No. They should know before they go forward that they have sufficient information or sufficient papers to go forward or they won't qualify.

Mr. ROSEN. Okay.

RECROSS-EXAMINATION

By Mr. ARCARI:

Q. I want to ask a few questions in reference to: Do you have any cases where—let me withdraw the question. Do you know of any cases where the welfare mother recipient refuses

to disclose the name of the putative father of the child in question where there is an attorney appointed in the Superior Court to represent the minor child in a divorce action, a
101–36 pending divorce action?

A. No. Most of—you're referring to a guardian ad litem?

Q. Yes, all right.

A. They're very cooperative with attorneys in guardian ad litems.

Q. I don't think I understand you correctly. I'm saying, do you have any case where the guardian ad litem has been appointed in a Superior Court to represent a minor child where a child was born out of wedlock and there is a pending divorce action? Have any of those cases come into your hands where it's been referred out to an attorney or back to the guardian ad litem to cite the mother before the Circuit Court?

A. I haven't had any yet, no.

Mr. KELLY. Are you finished?

Mr. ARCARI. Yes.

RECROSS-EXAMINATION

By Mr. KELLY:

Q. Have you ever sent out a case involving a woman who bore a child outside of marriage where the woman was not on welfare?

A. I?

Q. Yes, you.

A. No, only welfare cases.

101–37 Q. The only cases that you use 52–440b for are welfare recipients?

Q. The only cases that you use 52–440b for are welfare recipients?

A. The only cases I refer for an attorney to use the 52–440b is only welfare cases. That's all I have contact with.

Q. So you only deal with welfare recipients?

A. That's all.

Mr. KELLY. All right.
Mr. ROSEN. Okay. Thank you.
Mr. KELLY. That's it.
(The deposition was adjourned at 4:35 PM.)

101–38

STATE OF CONNECTICUT,
STATE WELFARE DEPARTMENT,
New Haven, Conn.

DEAR — You have agreed to cite the above-named person to appear before a Judge of the Circuit Court according to the terms of Section 52–440b of the Connecticut General Statutes, for disclosure of the name of the putative father of her child, and her agreement to institute paternity action.

The following represents our established payment for your professional services. In addition, we will reimburse you for sheriff's fees for simple service, and actual court costs paid by you, if itemized according to Section 52–261 of the General Statutes and submitted on your billhead with the following certification:

"I certify that I have paid the above items and have receipts for same."

$75—if the mother names the father prior to a court hearing.
$150—if the matter goes to a full hearing before the court.

The same fee prevails regardless of the number of children and/or fathers involved, provided the action involves one respondent.

If the mother names the father but refuses to initiate paternity proceedings, you will be asked to initiate an action on behalf of the Welfare Department under the terms of 52–440a of the General Statutes, for which a further fee schedule has been established.

Please contact the undersigned for any further information you require, and advise of your progress in the matter.

Sincerely,

_____ _____,
Division of Resources.

102–1 [Children's Exhibit 5]

United States District Court for the District of Connecticut

Civil Action No. 15,579

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH, AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

Vs.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Civil Action No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED, PLAINTIFFS

Vs.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT, DEFENDANTS

Affidavit of Edward Zigler

Edward Zigler, being first duly sworn, deposes and says:

1. I am a psychologist specializing in the general area of child psychology. I received my B.A. degree at the University of Missouri at Kansas City in 1954 and my Ph.D. from the University of Texas at Austin in 1958.

102–2 I have taught at the University of Missouri and Yale University and am presently Professor of Psychology and Director of the Child Development Program, Department of Psychology, Yale University. I am also Head of the Psychology Section at the Yale Child Study Center and Chairman Designate of the Department of Psychology at Yale.

In 1970 I was appointed by the President as Head of the Office of Child Development and Chief of the Children's Bu-

reau at the Department of Health, Education, and Welfare. I served in these positions until 1972, and I am now a consultant to the Office of Child Development. In addition, I am a member of the Governing Council, Society for Research in Child Development and of the Policy and Planning Board of the American Psychological Association. I am also a present or past member of numerous other professional organizations, panels, and boards in the field of child psychology and psychiatry.

My areas of special interest within the field of child psychology include motivational determinants of children's performance; cognitive development and mental retardation, developmental theory of pschopathology, socio-economic deprivation, and genetic-environmental determinants of children's performance. I have written approximately one hundred fifty research, theoretical and critical books, articles and reviews in these areas.

2. I am familiar with the provisions of Section 52–440b of the Connecticut General Statutes, which require the
102–3 mothers of illegitimate children on welfare and certain other mothers of illegitimate children to name the putative father of those children and prosecute a paternity action against the putative father upon pain of fine or imprisonment.

3. It is my professional opinion, based on my clinical experience and my knowledge of the literature and research in the field of child development, that disclosure—and particularly compelled disclosure—of the identity of a child's father to that child will in many cases be extremely destructive to the child's emotional well-being.

4. A child whose father is absent from the home is in a precarious position psychologically. Boys in particular often have great difficulty learning what it means to be a man. Some boys as a result of father absence become "over-feminized" while others do not learn to control their aggressions and associate extreme aggressive behavior with masculinity.

5. A child whose father is absent frequently copes with the absence of his father by forming an idealized image of his father.

A child will frequently come to believe that his absent father is a very special and wonderful person. The child thus imagines a father who is larger than life to help overcome his sense of loss at not having a father present in his home. Part of this idealization of the father often includes a belief that the father wants to come live with the family and the child but for some reason is unable to.

102–4 6. This creation of an idealized image of a father is frequently the most successful adjustment possible for a child whose father is absent from the home. Imagining an ideal father may enhance a child's self-esteem and therefore minimize the destructiveness of having an absent parent. The child may also identify himself with his idealized absent parent and by modeling himself after that ideal father come to develop the virtues he has imagined in his father.

7. Where the child learns the identity of an absent father, these processes of psychological adjustment may no longer be available. When a child learns who his father is, he has to cope with the knowledge that his father is not ideal, but may be ordinary or someone the child is ashamed to have for a father. In such a situation the child's self-image will be severely damaged because the child instead of modeling himself after an ideal image rather may model himself after, imitate, and eventually become like his image of his real father. This image is likely to be bad, to coincide with society's image of men who are unwilling to support their families and desert their children, and will in any event not be the ideal that the child can create of the truly unknown father.

8. The child's self-image will also be severely damaged when he knows who his father is where this knowledge brings home the fact of the father's failure to live in the home. A young child will assume that his father is absent because the

102–5 child is unworthy in some way or because his father hates him. In other words the child will feel guilty and inadequate because he will assume that it is his fault that his father is absent.

9. In situations where a mother's being compelled to testify against a father has exacerbated strains between parents—as it may be expected to do in many situations—the child's self-blame may be reinforced by statements or cues from his parents that he is in fact the cause of tension between them, and his feelings of guilt will be increased.

10. Where the mother's being compelled to testify against a father has created tension and anxiety for the mother, this tension and anxiety will be especially destructive for a child who is already suffering from the handicap of an absent parent, and where mothers blame their children for creating strain between parents this harm will be compounded because the anxiety felt by the mother, which will rub off on the child in any event, may find its expression as anger and resentment at the child for being the source of the mother's embarrassment and the imposition of legal obligations on the father.

11. Intruding into the mother-child relationship by compelling disclosure of the father's name also undermines what is left of the happiness in that relationship by making
102–6 the mother feel even less confident and secure as a mother. Particularly in strained situations such as father absent homes, it is important to a child for his mother to feel free and confident in her relationship with the child. State compulsion and intrusion into one aspect of that relationship—the information the mother imparts about the father—may be expected to leave a mother less sure of herself as a mother. She will feel less in control of her relationship with her child; and as a result the child will feel less secure and sure of himself and who he is. Because the State is making an important decision about family life the mother, and hence the child, will also to some extent shift responsibility for parenting from the mother to the State, an effect which increases a sense of dependency on the state in both mother and child.

Signed.....
Edward Zigler

STATE OF CONNECTICUT
County of New Haven ss: April 30, 1973

Personally appeared before me Edward Zigler, Ph. D., and made oath to the truth of the foregoing affidavit.

DAVID ROSEN,
Commissioner of Superior Court.

103 United States District Court for the District of Connecticut

Civil No. 15,579

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH AND ALL OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Civil No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Before: TIMBERS, *Circuit Judge*, BLUMENFELD and NEWMAN, *District Judges*.

Memorandum of Decision, Findings of Fact and Conclusions of Law

BLUMENFELD, *District Judge:*

By this action, the plaintiffs[1] challenge the constitutionality of Public Act 439 § 4 (1971), Conn. Gen. Stats.
104 § 52–440b.[2] The challenged statute is part of a comprehensive legislative scheme whereby the mother of any illegitimate child is legally obligated to discuose the name of her

[1] Because of the special circumstances of this case, plaintiffs sue under fictitious names. They are all unwed mothers of children who sue on their own behalf as well as on behalf of their minor children.

[2] Conn. Gen. Stats. § 52–440b provides:

"(a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit

child's biological father and to prosecute a paternity action against the named putative father.[3] The plaintiffs rely
105 upon the Civil Rights Act, 42 U.S.C. § 1983, for a cause of action and upon 28 U.S.C. § 1343(3) for this court's jurisdiction. In addition to injunctive and declaratory relief, 28 U.S.C. §§ 2201 et seq., they seek to maintain their suit as a class action. Fed. R. Civ. P. 23.

Because they sought to enjoin the operation of a state statute, this three-judge district court was convened. 28 U.S.C. §§ 2281, 2284.[4]

I

The Parties

The plaintiffs in this suit are all unwed mothers of illegitimate children, allegedly eligible to receive welfare benefits under the Aid to Families with Dependent Children (AFDC) program of the Social Security Act of 1935, Sections 401 et seq., 42 U.S.C. §§ 601 et seq. (hereinafter the Act). They seek to represent the class of individuals similarly situated as well as their children.

The defendant is the Commissioner of Welfare, Nicholas Norton, sued in his individual and representative capacity and charged with the responsibility of implementing the
106 provisions of this statute with regard to individuals presently receiving welfare benefits.

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court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

"(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both."

[3] Failure to comply with this duty may result in the mother being held in contempt of court, and fined not more than $200 and/or imprisoned for not more than one year. Conn. Gen. Stats. § 52-442(a) as amended by Public Act 439 § 3(b) (1971) provides for a judgment "for support of the child by payment of a weekly sum until the child attains the age of eighteen years, together with reimbursement for the lying-expense, accrued maintenance * * *."

[4] The decision granting the plaintiffs' motion to convene a three-judge district court and denying the plaintiffs' motion for preliminary injunctive relief is reported at 356 F. Supp. 202 (D. Conn. 1973). Issues adequately discussed in that decision will not be restated here and familiarity with that opinion is assumed.

II

Class Action

The plaintiff mothers who instituted this action in their own behalf and in behalf of their children moved for certification of this case as a class action under Fed. R. Civ. P. 23(a) and (b)(2). Of course, the plaintiff mothers, as guardians of their respective children, may sue on their behalf. Thus, the children are not only proper, but necessary parties. However, some of the interests which the mothers urge relating to the subject matter of this action are neither typical of nor congruent with the interests of their children, but actually conflict with them in several respects. In light of this conflict of interests between the mothers and their children, the court, on its own motion, appointed counsel to represent the interests of the children.

It is clear that the plaintiffs, if regarded as members of a class which includes their children as well as themselves, do not meet the condition of Rule 23(a)(4) that "the representative parties will fairly and adequately protect the interests of the class." Since this is in all other respects properly a
107 class under Rule 23, the obstacle presented by this claim to represent an overly broad class may easily be obviated by dividing the mothers and their children into appropriate separate subclasses. See 3B Moore's Federal Practice, § 23.07(3). The classes consist of: (1) those mothers receiving AFDC assistance who refuse to comply with § 52–440b; and (2) the illegitimate children of those mothers.

See *Doe* v. *Shapiro*, 302 F. Supp. 761, 762 n. 3 (D. Conn. 1969), *appeal dismissed*, 396 U.S. 488, *rehearing denied*, 397 U.S. 970 (1970).

III

Claims

The plaintiffs allege that as applied to them Conn. Gen. Stats. § 52–440b violates several constitutional rights and safeguards, including due process, equal protection, and the right of privacy. In addition, they contend that the Connecticut statute is inconsistent with the underlying policies of the Act and is therefore invalid under the supremacy clause.

As will appear, their arguments in support of these contentions overlap and are variations of a single theme, namely that in the opinion of the plaintiff mothers the adverse con-
108 sequences which mother and child may suffer by reason of the procedures employed by the state to enforce the uncontested obligation of a man to support his child born of an unwed mother far outweigh any resultant benefit to them or to society. Without questioning the sincerity with which the plaintiff mothers hold their views, it appears to the court that the legal semantics in which they have dressed their particular views about morality, propriety, and psychology do not furnish any constitutional or statutory basis for striking down Connecticut's statute. While some of their arguments are clearly non-starters which do not merit extended discussion, the court will consider all of them seriatim.

IV

Statutory Conflict

We proceed first to examine the merits of the plantiffs' claim that Conn. Gen. Stats. § 52–440b is so in confli with the AFDC Act that it must fall under the supren. y clause.[5]
109 The plaintiffs' principal argument is that this statute is "inconsistent with the basic purpose and objective of the Social Security Act." A brief analysis of relevant portions of that Act is needed to place their argument in proper context.

A. *Social Security Act—AFDC*

Under the AFDC program, in which Connecticut participates, financial assistance is provided for dependent children and their families. The program is financed with matching funds and administered by the states. As the Supreme Court has noted in *King* v. *Smith*, *supra*, 392 U.S. at 316–17:

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[5] "That the three-judge court itself not only had jurisdiction but would have been obliged to adjudicate this statutory claim in preference to deciding the original constitutional claim in this case follows from King v. Smith, 392 U.S. 309 (1968), where, on an appeal from a three-judge court, we decided the statutory question in order to avoid a constitutional ruling. 392 U.S. at 312 n.3." *Rosado* v. *Wyman*, 397 U.S. 397, 402 (1970). See also, *King* v. *Smith*, 392 U.S. 309 (1968); *Harmon* v. *Brucker*, 355 U.S. 579, 581 (1958).

> The AFDC program is based on a scheme of cooperative federalism. See generally Advisory Commission Report, supra, at 1–59. It is financed largely by the Federal Government, on a matching fund basis, and is administered by the States. States are not required to participate in the program, but those which desire to take advantage of the substantial federal funds available for distribution to needy children are required to submit an AFDC plan for the approval of the Secretary of Health, Education and Welfare (HEW). 49 Stat. 627, 42 U.S.C. §§ 601, 602, 603, and 604. See Advisory Commission Report, supra, at 21–23. This plan must conform with several requirements of the Social Security Act and with rules and regulations promulgated by HEW. 49 Stat. 627, as amended, 42 U.S.C. § 602 (1964 ed. Supp. II). See also HEW, Handbook of Public Assistance Administration, pt. IV, §§ 2200, 2300 * * *. [Footnote omitted.]

Within this broad statutory framework, the states are empowered to enact legislation intended to further the
110 policies of the Act, with the caveat that in so doing they may not impinge on the constitutional rights of the recipients or contravene the supremacy clause by promulgating legislation squarely in conflict with the federal law. See, e.g., *King* v. *Smith, supra*, 392 U.S. at 318. In testing whether the Connecticut statute contravenes the Act, we follow the instructions in *New York State Dept. of Social Services* v. *Dublino*, —— U.S. ——, 41 U.S.L.W. 5047, 5052 n. 29 (June 21, 1973) quoted in the margin.*

The AFDC program, as with many pieces of social welfare legislation, evidences disparate values and competing policies

* "In considering the question of possible conflict between the state and federal work programs, the court below will take into account our prior decisions. Congress 'has given the States broad discretion,' as to the AFDC program, Jefferson v. Hackney, supra, at 545; see also Dandridge v. Williams, supra, at 478; King v. Smith, supra, at 318–319, and 'so long as the State's actions are not in violation of any specific provision of the Constitution or the Social Security Act,' the courts may not void them. Jefferson, supra, at 541. Conflicts, to merit judicial rather than cooperative federal-state resolution, should be of substance and not merely trivial or insubstantial. But if there is a conflict of substance as to eligibility provisions, the federal law of course must control * * *."

which often appear to be in conflict. We take as our touchstone the settled proposition that with regard to dependent children "* * * protection of such children is the paramount goal of AFDC." *King* v. *Smith, supra,* 392 U.S. at 325 (*footnote* 111 omitted). Since the implementation of Connecticut's statute may lead to the incarceration of the mother of a dependent child, the plaintiffs contend that it is implacably inconsistent with that goal. For reasons which will appear, we cannot accept that assessment.

The AFDC statute contains a frank recognition of the importance of determining the paternity of those needy children born out of wedlock. Title 42 U.S.C. §§ 602(a)(17)(A) (i) and (ii) provide:

> "(A) for the development and implementation of a program under which the State agency will undertake—
>
> "(i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the paternity of such child and secure support for him, and
>
> "(ii) in the case of any child receiving such aid who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, * * *."[7]

112 The question presented is thus not whether Connecticut may act to establish the paternity of and insure the paternal support for children who qualify for AFDC benefits, a proposition we find firmly established, but rather whether

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[7] The Senate Finance Committee noted with regard to the above cited 1967 amendment to the Social Security Act: "A substantial proportion of the persons receiving aid under the AFDC program are eligible because of the desertion by a parent of the child. Several provisions are already in the law and more are proposed under the bill to provide additional tools to States and to impose further obligations on them to assure the determination of legal responsibility for support and to make efforts to make these collections. The committee believes it is essential to make certain that all legally responsible parents of sufficient means make their appropriate contribution to the support of their children." S. Rep. No. 744, 1967 U.S. Code Cong. & Admin. News at 2834, 2907.

the procedure which it has selected to achieve this end is in such "direct and positive" conflict with the Act that "the two acts connot be reconciled or consistently stand together." *Kelly* v. *Washington*, 302 U.S. 1, 10 (1937). See *Snell* v. *Wyman*, 281 F. Supp. 853, 869 (S.D. N.Y. 1968) (three-judge district court), *aff'd*, 393 U.S. 323 (1969).

B. The Connecticut Statute and Its History

In order to put the present case in perspective it is important to recall earlier attempts by Connecticut to solve this problem.

Prior to enacting the challenged statute, Connecticut attempted by departmental regulations to establish the paternity of those children of unwed mothers who refused to assist in the establishment of their children's paternity by denying AFDC benefits first to the children and later to their mothers themselves. Although the state's laws were challenged on not insubstantial constitutional grounds, the three-judge district court which heard that case enjoined their continued operation on the ground that they imposed an additional and impermis-
113 sible ground of eligibility in conflict with the criteria established by Congress under the AFDC program. *Doe* v. *Shapiro, supra*, 302 F. Supp. 761; *Doe* v. *Harder*, 310 F. Supp. 302 (D. Conn.), *appeal dismissed for want of jurisdiction*, 399 U.S. 902 (1970).[8]

[8] Several district courts have followed the analysis of and reached the same result as these two Connecticut cases. See, e.g., *Story* v. *Roberts*, 352 F. Supp. 473 (M.D. Fla. 1972); *Doe v. Ellis*, 350 F. Supp. 375 (D. S.C. 1972); *Doe v. Gillman*, 347 F. Supp. 483 (N.D. Iowa 1972); *Doe v. Levine*, 347 F. Supp. 357 (S.D. N.Y. 1972); *Saiz v. Hernandez*, 340 F. Supp. 165 (D. N. Mex. 1972); *Saddler* v. *Winstead*, 332 F. Supp. 130 (N.D. Miss. 1971); *Doe* v. *Swank*, 332 F. Supp. 61 (N.D. Ill.), *aff'd summarily sub nom. Weaver v. Doe*, 404 U.S. 987 (1971); *Taylor v. Martin*, 330 F. Supp. 85 (N.D. Cal. 1971), *aff'd summarily sub nom. Carleson v. Taylor*, 404 U.S. 980 (1972); *Meyers v. Juras*, 327 F. Supp. 579 (D. Ore.), *aff'd summarily*, 404 U.S. 803, *rehearing denied*, 404 U.S. 961 (1971). In light of these decisions, three of which have been affirmed summarily by the Supreme Court, it was seemingly settled until recently that AFDC benefits could not be denied an otherwise qualified mother or child in an effort to coerce the mother to cooperate with local authorities in establishing her child's paternity. However, on April 30, 1973, HEW adopted a new regulation, 45 C.F.R. § 233.90(b)(4), effective July 2, 1973, which, while reaffirming the position that a child may not be denied benefits for the refusal of his parent, squarely provides: "(4) A child may not be denied AFDC either initially or subsequently because a parent or caretaker relative fails to assist: "(i) in the establishment of paternity of a

114 The plaintiffs advance the same arguments now that were used then. Yet if we look back we observe that the present Connecticut statute differs from its predecessor regulation in at least two significant particulars. While the operation of this new statute may have the undesirable effect of diminishing the amount of time that a recalcitrant mother will be able to spend with her child,[9] it does not deny to either the
115 mother or the child the benefits of food, clothing or shelter in accordance with their needs. Thus, the particular conflict with the AFDC statute relied upon by all the courts cited in footnote 8, *supra*, namely that the state cannot condition the enjoyment of benefits upon conditions not provided for by Congress, is simply not in this case. In addition, the

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child born out of wedlock; or (ii) in seeking support from a person having a legal duty to support the child; *but neither this nor any other provision of these regulations should be construed to require that provision be made by a State in its AFDC program for the maintenance of a parent or caretaker who fails to provide such assistance and AFDC may be denied with respect to such parent or caretaker.*" [Emphasis added]. Here we have a regulation formally adopted by the agency entrusted with the enforcement of the Act which specifically bears on the particular problem presented in *Doe v. Shapiro* and *Doe v. Harder, supra*. To the extent that it is based on factors emanating from the agency's peculiar competence rather than considerations extracted from judicial decisions, it is entitled to great weight. Cf. *Great Northern Ry.* v. *United States*, 315 U.S. 262 (1942). Nor is the weight to be accorded to the regulation in construing the statute dependent on strict contemporaneity of the statute and the promulgated regulation. *Id.* at 275 (regulation 13 years after enactment held to merit judicial esteem). See also, *CBS v. Democratic Nat'l Committee*, 36 L. Ed. 2d 772 (1973); *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969); *Udall v. Tallman*, 380 U.S. 1, 16 (1965). The weight to be given this most recent regulation as evidence that refusal of aid to the parent is consistent with the federal statute in view of judicial constructions of the Act which antedated it presents an interesting question about which we might appropriately reflect. But since we distinguish *Doe v. Shapiro* and its progeny from the present case on other bases, we leave that exercise for another time.

[9] Under Connecticut's regulatory scheme responsible public officials must provide various essential services, including the service of a housekeeper or homemaker, where such services are needed. See Conn. State Welfare Dept. Social Service Policies—Public Assistance (Manual Vol. 1, § 5030 at 8 et seq., effective 8/1/72). And in order to relieve pressure on the family unit resulting from the absence of a parent from the home, 42 U.S.C. § 606(b)(1) provides that aid payments should include an amount "to meet the needs of the relative (or essential person) with whom any dependent child is living." Cf. *Dandridge* v. *Williams*, 397 U.S. 471, 496 (1970) (Mr. Justice Douglas dissenting).

statute applies across the board to all mothers of illegitimate children without regard to their or their children's status as AFDC recipients.[10]

Thus, Connecticut's statute furthers a significant purpose of the AFDC program. And unlike the *Doe* v. *Shapiro* line of cases outlined above, it does not per se add an additional eligibility requirement to those provided for by the Act.[11] No otherwise qualified recipients will be denied benefits to which they are lawfully entitled by reason of the operation of the statute. While the incarceration of a contemptuous mother may not always be in her child's best interest, this does not estab-
116 lish any irreconcilable conflict between the two acts.

The fact that the federal statute delegates to the states the responsibility of establishing a specific program to accomplish the goal precisely defined by Congress indicates that different programs might be established by the different states to deal with their own local problems.[12] Cf. *Askew* v. *American Waterways Operation*, —— U.S. ——, 36 L. Ed. 2d 280 (1973). That Connecticut may not meet its obligation under 42 U.S.C. § 602(a)(17) by denying benefits to an otherwise qualified child does not mean that it may not impose other sanctions upon the mother appropriate toward that end. The plaintiffs apparently take the position that no method of compulsion upon them is permissible. Surely the fact that the Act stopped short of spelling out the particular method to be used by the states in carrying out the required "program" does not mean that every solution to the problem of obtaining the cooperation of the mothers irreconcilably conflicts with the statute. Unlike the situation in *Doe* v. *Shapiro, supra*, where the operation of the state law was found to directly impinge upon a specific provision of the Act, this statute presents no such "direct and

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[10] In the absence of any legislative history, the court inquired and was informed that the scope of this statute was intended not only to protect the state's coffers, but also to establish the paternity of all illegitimate children so that they might enjoy the long term psychological and economic advantages to be gained thereby. See *Doe* v. *Norton*, *supra*, 356 F. Supp. at 207.

[11] Cf. *New York State Dept. of Social Services* v. *Dublino*, *supra*, 41 U.S.L.W. 5047.

[12] Statistics provided by the Connecticut State Department of Health indicate that in recent years about 10% of the children born in Connecticut were born out of wedlock.

positive" conflict. The specific statutory language hardly provides support for the plaintiffs' argument that
117 the challenged statute is contrary to the underlying theory of the Social Security Act. Their separate contention that the challenged statute is in irreconcilable conflict with these federal provisions is obviously devoid of merit, and we reject it. Connecticut's statute does not violate any specific provision of the Social Security Act. *New York State Dept. of Social Services* v. *Dublino, supra,* 41 U.S.L.W. 5047. Having analyzed Connecticut's statute in relation to the federal statute, we turn next to the plaintiffs' contention that it operates to violate their rights under the Constitution.

V

Constitutional Privacy

A right to privacy, especially marital privacy, recently found to merit constitutional protection, emanates from the "penumbras" of the first, third, fourth, fifth and ninth amendments. *Griswold* v. *Connecticut*, 381 U.S. 749 (1965). This was reiterated in *Roe* v. *Wade,* 35 L.Ed.2d 147, 176–77 (1973), where the Court concisely explained that "(although) (t)he Constitution does not explicitly mention any right of privacy * * * (there is) a line of decisions * * * (wherein) the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution * * *. These decisions make it clear that only personal rights that can be deemed 'fundamental' or implicit in the concept of ordered liberty,' are included in
118 this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, procreation, contraception, family relationships, and child rearing and education." [Citations omitted].

Thus, the question presented is whether an unwed mother's desire to keep secret the name of her child's father is so "fundamental" or "implicit in the concept of ordered liberty" as to require constitutional protection.[13] See *Doe* v. *Norton, supra,*

[13] Even if her desire falls within the boundary of the right of privacy, its regulation may be justified by a compelling state interest through a statute narrowly drawn "to express only the legitimate interest at stake." *Roe* v. *Wade, supra,* 35 L.Ed.2d at 178.

356 F.Supp. at 205. The argument of each plaintiff mother is that because a side effect of her participation in legal action to establish the paternity of her child may result in additional strains in family relationships within the home or may unwisely force the permanent severance of relationships with his father,[14] her wish to decide for herself whether a paternity action should be brought is so closely related to the concept of privacy that it merits being included within the constitutional guarantee of personal privacy. This contention calls for analysis of the two separate aspects which conjoin to define that right. One has to do with the power to make inquiry and the other with the extent of the particular inquiry sought to be made.

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119 [14] The plaintiffs contend that the statute denies due process for failure to provide for a hearing to determine in each case whether the disclosure of the name of the father will have such adverse effects upon the plaintiffs as to outweigh its benefits. When an analogous argument was made in a similar context, *Wyatt* v. *United States*, 362 U.S. 525, 530 (1960), Mr. Justice Harlan responded:

> To make matters turn upon ad hoc inquiries into the actual state of mind of particular women (who did not want to testify against their husbands) thereby encumbering Mann Act trials with an issue of the greatest subtlety, is hardly an acceptable solution.

Accordingly, we reject that argument in this case.

Although we hold that the constitution does not require such an analysis to be made in order to sustain the validity of the statute, this does not mean that the sanctions permitted by the statute are likely to be woodenly imposed without regard for impact upon the family.

We are unwilling to assume such an unthinking automatic exercise of judicial power by the state judiciary. In the event of a mother's failure to disclose the father's name, the statute provides that she "may" be found in contempt and "may" be fined or imprisoned. This authorizes the exercise of sound judicial discretion to determine whether in a particular case non-disclosure warrants a finding of contempt or the imposition of penalties. In this regard, the statute is in marked contrast to other Connecticut disclosure statutes, which provide that in the event a person obligated to furnish information refuses to do so, a state judge "shall commit such person to jail until he testifies . . ." *E.g.*, Conn. Gen. Stats. § 17–2a (witnesses at welfare department fair hearings); Conn. Gen. Stats. § 12–2 (witnesses at tax department hearings); Conn. Gen. Stats. § 30–8 (witnesses at liquor control commission hearings). We need not anticipate at this point the variety of situations that will confront the state circuit court judges before whom contempt citations will be sought. It is sufficient in this litigation, which attacks the statute on its face, to note that the statute, in its application, does not preclude and, indeed, appears to specify the exercise of sound judicial discretion.

In a related argument the plaintiffs contend that in requiring disclosure of the father's name in all cases, and prohibiting the mother from contesting

120 *A. The Scope of the Power*

The broad scope of the government's power to compel testimony and the rationale on which it is based are fully delineated in *Kastigar* v. *United States*, 406 U.S. 441, 443–44 (1972):

121 The power of government to compel persons to testify in court or before grand juries and other governmental agencies is firmly established in Anglo-American jurisprudence. The power with respect to courts was established by statute in England as early as 1562, and Lord Bacon observed in 1612 that all subjects owed the King their 'knowledge and discovery.' While it is not clear when grand juries first resorted to compulsory process to secure the attendance and testimony of witnesses, the general common law principle that 'the public has a right to every man's evidence' was considered an 'indubitable certainty' which 'cannot be denied' by 1742. The power to compel testimony, and the corresponding duty to testify, are recognized in the Sixth Amendment requirements that an accused be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his favor. The first Congress recognized the testimonial duty in the Judiciary Act of 1789, which provided for compulsory attendance of witnesses in the federal courts. Mr Justice White noted the importance of this essential power of government in his concurring opinion in Murphy v. Waterfront Comm'n, 378 US 52, 93–94, 12 L Ed 2 678, 704, 84 S Ct 1594 (1964):

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the desirability of that disclosure in any particular case, the statute imposes an unconstitutional irrebutable presumption that disclosure is in the best interest of the child. This contention, if accepted, would stretch the concept of an irrebutable presumption out of recognition. The irrebutable presumptions struck down in *Bell* v. *Burson*, 402 U.S. 535 (1971), and *Stanley* v. *Illinois*, 405 U.S. 645 (1972), all concerned issues of fact: the fault of a driver involved in an accident; and the fitness as a father of a man who sired an illegitimate child to be its guardian. The present case presents no presumption of fact in any sense. Connecticut's avowed goal is getting fathers to support their children, illegitimate or otherwise. This is simply on a different plane from the question of whether, in a given child's case, it is better that his father's identity remain undisclosed. It is a legislative value judgment about the responsibility—financial and perhaps moral—of all fathers. The theory of *Bell* and *Stanley* cannot avail the plaintiffs here. See also, *Vlandis* v. *Klein*, 41 U.S.L.W. 4796 (June 11, 1973).

> Among the necessary and most important of the powers of the States as well as the Federal Government to assure the effective functioning of government in an ordered society is the broad power to compel residents to testify in court or before grand juries or agencies. See Blair v. United States, 250 US 273 (63 L Ed 979, 39 S Ct 468). Such testimony constitutes one of the Government's primary sources of information. [Footnotes omitted].

As a broad proposition, this power extends to and includes with particular pertinence, those situations in which the testimony sought to be elicited may prove embarrassing, or otherwise impinges upon the sensitivities of the witness whose testimony is sought. As a noted commentator has stated:

122 > (T)he sacrifice may be of his privacy (or) of the knowledge which he would preferably keep to himself because of the disagreeable consequences of disclosure. This inconvenience which he may suffer, in consequence of his testimony, by way of enmity or disgrace or ridicule or other disfavorable action of fellow members of the community, is also a contribution which he makes in payment of his duties to society in its function of executing justice * * *. When the course of justice requires the investigation of the truth, no man has any knowledge that is rightly private. 8 Wigmore, Evidence § 2192 at 72 (McNaughton rev. 1961) [footnote omitted].

See also, *Branzburg* v. *Hayes*, 408 U.S. 665 (1972).

The only limitation on that power found in the Constitution is the fifth amendment's privilege against self-incrimination, which is that "no person shall be compelled in any criminal case to be a witness against himself." This is in no way implicated here. We are not confronted with the problem of balancing the benefit to the state of the required information against the burden to the plaintiffs from the risks of self-incrimination as in *California* v. *Byers*, 402 U.S. 424 (1971). The competing interests at this level have been resolved in favor of the plaintiffs.

In related sections of the challenged statute, the state furnishes an immunity bath embracing "transactional" as well as "use" restrictions held sufficient in *Kastigar* v. *United*

123 *States, supra,* 406 U.S. 441.[15] Indeed, the immunity granted extends to the putative father as well.[16] With the privilege not to be compelled to incriminate themselves completely safeguarded, all that could arguably support the plaintiffs' unwillingness to answer the particular inquiry authorized by the state would be simply a rule of evidence classified as an evidentiary privilege.[17]

The privilege asserted by the unwed mothers has its closest analogy to the marital privilege sometimes afforded to husband and wife.[18] But that privilege has no roots in the Constitution. In *Wyatt* v. *United States,* 362 U.S. 525
124 (1960), the Court held that an objecting wife could be compelled to testify against her husband in a Mann Act prosecution notwithstanding her claim of marital privilege. The rationale for the denial of the privilege in that case was anchored in the legislative judgment underlying the Mann Act and not in the Constitution:

> "Applying the legislative judgment underlying the Act, we are led to hold it not an allowable choice for a prostituted witness-wife 'voluntarily' to decide to protect her husband by declining to testify against him." *Id* at 530 (Mr. Justice Harlan for the majority).

All of the Justices agreed upon the controlling principle:

> That this decision is uniquely legislative and not judicial is demonstrated by the fact that, both in Eng-

[15] Public Act 439 § 2 (1971) amending Conn. Gen. Stats. § 52-435(b). This section tracks the one set forth below in footnote 16 except that "mother" is substituted for "putative father."

[16] Public Act 439 § 1 (1971), Conn. Gen. Stats. § 52-435c provides: "The putative father of any child for whom adjudication of paternity is sought in paternity proceedings shall not be excused from testifying because his evidence may tend to disgrace him or incriminate him; nor shall he thereafter be prosecuted for any criminal act about which (1) he testifies in connection with such proceedings or (2) he makes any statement prior to such proceedings with respect to the issue of paternity."

[17] We do not call the plaintiffs' alleged right not to testify a privilege in order to fit it into the now rejected "concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege,'" *Graham* v. *Richardson,* 403 U.S. 365, 374 (1971), but only to signify the mere negative of the duty to testify.

[18] For the history and policy of this somewhat questionable privilege see 8 Wigmore, Evidence §§ 2227, 2228 (McNaughton rev. 1961). See also, H.R. Rep. No. 92-359, 92d Cong., 2d Sess., reported in 1972 U.S. Code Cong. & Admin. News at 836.

land and in this country, changes in the commonlaw privilege have been wrought primarily by legislatures. *Id.* at 535 (dissenting opinion of Mr. Chief Justice Warren) (footnote omitted).

The real divergence of views which emerged concerned not the authority of the legislature to compel the testimony, but only over whether "prior congressional action provide(d) no support for the Court's decision," *id.* at 535; there was no disagreement over the basis of the authority on which the decision should rest. In both opinions, there was a complete absence of any indication of a link between a husband-wife privilege and a right which is "fundamental" in the sense that it is among the rights and liberties protected by the Constitution. Testimonial privileges arising out of confidential
125 relationships are based on a legislative judgment that the need for preserving from exposure disclosures made in confidence outweighs the search for truth, but none of these has even been considered as falling under the umbrella of constitutional protection. Cf. *Branzburg* v. *Hayes, supra,* 408 U.S. 665.

Furthermore, the privilege to withhold information asserted here concerns a relationship at least one step removed from that of husband and wife. Whatever merit there may be in the argument that a privilege in the wife not to testify against her husband preserves a marital relationship, the "policy of the privilege applies only to these who profess to maintain toward each other the legal relationship of husband and wife." 8 Wigmore, Evidence § 2230 (McNaughton rev. 1961).

The relationship which these unwed mothers seek to protect from disclosure is emphatically different. There is no privilege to withhold the testimony of a mere paramour or witness. *Id.* In the absence of any legal relationship the alleged "right" of these plaintiffs to refuse to answer the inquiries directed by the statute is devoid of any elements that comprise a jural interest.

B. The Extent of the Invasion

But even if we ignored the character of the relation-
126 ship urged to merit such protection and equated it with the more durable one of legal husband and wife, the disclosure required of these plaintiffs would not invade any "zone of privacy." Viewed from the perspective of the class

denied the privilege of remaining silent the "embarrassing" information has in large part been widely disclosed before any inquiries are made.[19] Furthermore, the inquiry focuses on identity of the father, not on the mother's misconduct. The question asked of the unwed mother is, "Who is the father of your child?" The object of the inquiry is to enforce a familial monetary obligation, not to interfere with personal privacy. There is no intrusion into the home nor any participation in interpersonal decisions among its occupants, even to the extent held permissible in *Wyman* v. *James*, 400 U.S. 309 (1971).[20] The statute does not forbid an unwed mother to have a man
127 in the house or even in her bedroom. Compare *King* v. *Smith*, *supra*, 392 U.S. 309. The only restriction it imposes upon either the unwed mother or the biological father to do as they please or make any decisions they wish in whatever relationship they desire to maintain is that the father satisfy his legal obligation to support his own child and that the mother provide what information she possesses useful toward that end.[21]

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[19] See *Roe* v. *Wade*, *supra*, 35 L.Ed.2d at 180: "The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus * * *. The situation is therefore inherently different from marital intimacy, or bedroom possession of obscene material, or marriage, or procreation, or education, with which Eisenstadt, Griswold, Stanley, Locing, Skinner, Pierce, and Meyer were respectively concerned * * *. The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly."

[20] In *Wyman* v. *James*, a regulation mandating visits to the home of AFDC families by a caseworker at least once in every three months was upheld as reasonable to (1) serve the paramount needs of the dependent child; (2) to determine that state funds were being properly used; (3) as not unnecessarily intruding on the beneficiary's rights in her home; (4) as providing essential information not obtainable from secondary sources; and (5) as not being oriented toward a criminal investigation.

[21] Our attention was called to the case of one mother of a child born out of wedlock who, although qualified to receive AFDC welfare benefits, refused to apply for them rather than disclose the name of her child's father. An argument against the home visitation regulation in *Wyman* v. *James*, *supra*, 400 U.S. at 324, based on hypothetically similar circumstances was rejected: "So here Mrs. James has the 'right' to refuse the home visit, but a consequence in the form of cessation of aid flows from that refusal. The choice is entirely hers, and nothing of constitutional magnitude is involved."

We conclude that the compulsion on the plaintiffs authorized by the statute does not impinge on any "fundamental" rights of the plaintiffs related to privacy.

We turn next to the contention of the plaintiffs that the statute violates their rights to equal protection of the laws.

128 VI

Equal Protection

The Supreme Court has emphasized two distinct standards for testing claims of denial of equal protection. To determine which test applies, our initial inquiry is whether the statute (*1*) "operates to the disadvantage of some suspect claims or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny * * *. If not, (*2*) the (Connecticut) scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment." *San Antonio Independent School Dist.* v. *Rodriguez*, 36 L. Ed. 2d 16, 33 (1973) [22]

[22] Until fairly recently, few would take any exception to this capsule summary of what has come to be referred to as the two-tiered standard of equal protection; the first requiring "strict judicial scrutiny," and the second requiring only some rational relationship to a legitimate state purpose. There is little doubt that this once-settled differentiation is currently being critically re-examined, particularly in this circuit, for symptoms of what Chief Judge Kaufman described in *City of New York* v. *Richardson*, 473 F. 2d 923, 931 (2d Cir.), *cert. denied sub nom. Wyman* v. *Lindsay*, 41 U.S.L.W. 3655 (June 18, 1973), as the giving way of the two-tiered equal protection standards "to a more graduated sliding-scale test." See generally, Gunther, The Supreme Court, 1971 Term, Forward, In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv.L. Rev. 1 (1972). See also, *Boraas* v. *Village of Belle Terre*, 476 F. 2d 806 (2d Cir. 1973); *Aguayo* v. *Richardson*, 473 F. 2d 1090 (2d Cir. 1973). It may be still unclear whether any set of new standards has been adopted, a situation which Judge Timbers believes is unsatisfactory. See *Boraas* v. *Village of Belle Terre, supra*, 476 F. 2d at 826 (dissenting from 4–4 denial of en banc reconsideration). Judge Newman in *Henry* v. *White*, Civil 15, 322 (D. Conn. May 2, 1973), citing to *San Antonio Independent School Dist.* v. *Rodriguez, supra*, 36 L.Ed.2d 16, and *McGinnis* v. *Royster*, 35 L.Ed.2d 282, 288–89 (1973),

129 Since the nature of the "rights" asserted by the plaintiffs are not in any sense "fundamental," the plaintiffs offer an alternative argument for subjecting the statute to "strict judicial scrutiny." This we also hold to be inapplicable.

We do not quarrel with the view that a discriminatory classification based upon illegitimacy of children ought to be inherently suspect.[23] But the plaintiffs' contention that the statute must be subjected to strict judicial scrutiny on the
130 ground that it adversely affects a suspect class amounts to no less than standing the doctrine on its head. Instead of operating to the disadvantage of children born out of wedlock the statute operates to their benefit.[24] The statute imposes no additional burden upon them. To the contrary, the statute under consideration operates prophylactically against the adverse differential treatment which the unwed mothers would

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observed that "more recent cases suggest that the rational relationship test is alive and well."

The factual situation presented in this case warrants no grand exegesis of where the law of equal protection is headed. It will suffice to note that to the extent that the "legitimate articulated state purpose" referred to by Mr. Justice Powell in *Rodriguez, supra*, 36 L.Ed.2d at 33, and in *McGinnis, supra*, 35 L.Ed.2d at 289, may be construed to establish a degree of rationality more akin to that in *Boraas, supra*, 476 F.2d 806, than to the "minimum rationality" of the older standard we adopt it for use in this case.

[23] "Status of birth, like the color of one's skin is something which the individual cannot control, and should generally be irrelevant in legislative considerations. Yet illegitimacy has long been stigmatized by our society. Hence discrimination on the basis of birth—particularly when it affects innocent children—warrants special consideration." *San Antonio Independent School Dist.* v. *Rodriguez, supra*, 36 L.Ed. 2d at 87 (dissent of Marshall, J.). See also, *Weber* v. *Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972).

[24] At this point, the interests of the unwed mothers and those of their children part company. In *Wyman* v. *James, supra*, 400 U.S. at 318, this discrimination between the interests of the unwed mother and her child was emphasized by Mr. Justice Blackmum:

"There are a number of factors that compel us to conclude that the home visit proposed for Mrs. James is not unreasonable:

"1. The public's interest in this particular segment of the area of assistance to the unfortunate is protection and aid for the dependent child whose family requires such aid for that child. The focus is on the *child* and, further, it is on the child who is *dependent*. There is no more worthy object of the public's concern. The dependent child's needs are paramount, and only with hesitancy would we relegate those needs, in the scale of comparative values, to a position secondary to what the mother claims as her rights."

impose on their children. Indeed, if the legislature were to enact a law protecting the "right" of unwed mothers to exclude their children from the benefit of paternal support, it would be struck down. In *Gomez* v. *Perez*, 35 L.Ed.2d 56, 60 (1973), the Court declared:

131 "We therefore hold that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because her natural father has not married her mother. For a State to do so is 'illogical and unjust.' Weber v. Aetna Casualty & Surety Co., supra, at 175." [25]

The effect of the statute is consistent with the trend of the law to separate the label "illegitimate" from the word "child" to prevent the exclusion of children of unwed mothers from benefits available to other children. One of the reasons for denying the plaintiffs' application for a temporary injunction against enforcement of the statute was that hardships would fall more heavily on the children than on their mothers.[26] See *Doe* v. *Norton*, supra, 356 F. Supp. 202.

132 The statute at issue involves neither discrimination against a "suspect" classification nor impinges upon a "fundamental" interest so as to require the application of the

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[25] It has long been the policy of Connecticut to require a father to support his illegitimate child. *State* v. *Wolfe*, 152 Conn. 199, 203 (1964); see also, *Franklin* v. *Congelosi*, 6 Conn. Cir. Ct. 357 (1970). And if there is any universal moral law it is that parents must nuture and support their young children; this is a duty that belongs to a man as a man, and not simply as a member of a civil society.

[26] Insofar as the operation of the statute strikes down a discrimination against the plaintiff children as illegitimates it should receive favorable judicial consideration rather than "strict scrutiny." *Weber* v. *Aetna Cas. & Sur. Co., supra*, 406 U.S. at 176. During the course of recent intensive analysis of equal protection standards the Supreme Court has consistently held that legislative discrimination to the *disadvantage* of children because of their out-of-wedlock birth could be justified only by a showing that the state interest furthered by the statute was "substantial." *Id.* at 170; *Gomez* v. *Perez*, *supra*, 35 L. Ed. 2d 56; *Levy* v. *Louisiana*, 391 U.S. 68 (1968); *Glona* v. *American Guarantee & Liab. Ins. Co.*, 391 U.S. 73 (1968); *Labine* v. *Vincent*, 401 U.S. 532 (1971); and see *Davis* v. *Richardson*, 342 F. Supp. 588 (D. Conn.), *aff'd*, 409 U.S. 1069 (1972).

"strict scrutiny" test. We turn, therefore, to the less stringent test of equal protection which is whether the statute "rationally furthers some legitimate articulated state purpose."

A. Governmental Interest

The plaintiffs urge upon us the test of equal protection adopted in *Boraas* v. *Village of Belle Terre, supra,* 476 F. 2d 806, and formulated in *Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415 (1920):

> The classification must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Since the reasonableness of the classification should be considered in relation to the object of the statute, we begin by first identifying the purpose of the statute.[27] Although
133 one of the important by-products of the operation of the statute is the long term benefit it secures to the children by the early establishment of their paternity, see *Doe* v. *Norton, supra,* 356 F. Supp. 202, its primary purpose is to enforce the obligation of a father to support his own child. There is no need to theorize. The face of the statute furnishes sufficient reliable guidance to its purpose, especially when read together with the complementary sections of the Social Security Act, as elaborated above in Part IV. Cf. *Richardson* v. *Belcher,* 404 U.S. 78 (1971). Consequently, we have no occasion to resort to that more embrasive standard of equal protection which permits a purpose to be found from "any state of facts which may be reasonably conceived to justify it." *McGowan* v. *Maryland,* 366 U.S. 420, 426 (1961), *quoted with approval in Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970). The defendant public official, who administers the laws under which welfare assistance is given to these plaintiffs, is not only authorized, but required, to pro-

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[27] The purpose need not have been a main objective of the statute or even one the legislature had in mind. *Fleming* v. *Nestor,* 363 U.S. 603, 612 (1960).

"(O)ur decisions do not authorize courts to pick and choose among legitimate aims to determine which is primary and which subordinate * * *. So long as the state purpose upholding a statutory class is legitimate and non-illusory, its lack of primacy is not disqualifying." *McGinnis* v. *Royster, supra,* 35 L.Ed.2d at 292.

ceed under the statute in order to establish the primary obligation of the father to support his child as one of the "re-
134 sources" which the state is entitled to consider in ascertaining the plaintiffs' eligibility for AFDC benefits. See 42 U.S.C. § 602(a)(7). Indeed, welfare beneficiaries may be required to assign any property they may have, or which they might in the future obtain, as security for repayment of the benefits they receive from the state under its welfare laws. See *Snell* v. *Wyman, supra*, 281 F. Supp. 853 (S.D. N.Y. 1968); *Charleston* v. *Wohlgemuth*, 332 F. Supp. 1175 (E.D. Pa. 1971), *aff'd without opinion*, 405 U.S. 970 (1972).

B. The Classification

The plaintiff mothers assert a right to be free from a discriminatory classification based on the fact that they are unwed mothers who receive public assistance. While shaping their claim in that form may appear to present some abstract inequality to complain about, that is accomplished only at the cost of leaving something out. This statute which imposes a duty upon an unwed mother to disclose the name of the putative father of her child does *not* distinguish between unwed mothers who receive public assistance and those who do not. The statute permits the compelled disclosure of the name of the father from any mother of an illegitimate child, viz: "to the welfare commissioner, if such child is a recipient of pub-
135 lic assistance, or to a selectman of a town in which such child is a recipient of general assistance, or *otherwise* to a guardian or a guardian ad litem of such child, * * *." [28] [Emphasis added].

In an attempt to bolster their argument, the plaintiffs suggest that it is unrealistic to expect any guardian appointed by the probate court to resort to the statute and that such a guardian would normally support the child himself. They also suggest that it is questionable if one whose parental rights are terminated pursuant to such an appointment would still have a legal duty to support the child. No support is offered for either argument and we reject both. That displacing a natural father as the guardian of the person or of the estate of his minor child

[28] The statute also applies to "the mother of any child born to a married woman during marriage which child shall be found not to be the issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction."

does not eliminate his obligation to continue to provide for its support is too settled to merit discussion. There are thousands of valid child support decrees against fathers who do not have custody of either the person or estate of their children.

If we were to accept the assumption of the plaintiffs that because of the division of authority among different persons to initiate proceedings under the statute proportionately fewer such proceedings would be brought by guardians or
136 guardians ad litem than by the commissioner, this would not render the classification offensive to the equal protection clause.[29] As Judge Frankel stated in *Snell* v. *Wyman*, *supra*, 281 F. Supp. at 865:

> Like the life of the law generally, the Fourteenth Amendment was not designed as an exercise in logic. It is ancient learning by now that a classification meets the equal protection test 'if it is practical, and is not reviewable unless palpably arbitrary.' Orient Insurance Co. v. Daggs, 172 U.S. 557, 562, 19 S. Ct. 281, 282, 43 L. Ed. 552 (1869). If the classification has 'some reasonable basis,' it cannot be held offensive to the Equal Protection Clause "because it is not made with mathematical nicety or because in practice it results in some inequality." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 31 S. Ct. 337, 340, 55 L. Ed. 369 (1911). "The problems
> 137 of government are practical ones and may justify, if they do not require, rough accommodations,—illogical, it may be, and unscientific."

[29] Perhaps the benefits which the statute authorizes for all illegitimate children and their mothers may not be sought after as assiduously by others legally responsible for the estates of the children. But there is no basis for assuming that the legislature intended arbitrarily to leave one class of illegitimate children without meaningful protection. The statute makes available in their behalf the same remedies that are enforceable by a welfare commissioner or a town selectman who has provided general assistance for needy families containing illegitimate children. Because the state may not be able to bring the benefits of the statute to all, it is not precluded from benefiting some. "The law does all that is needed when it does all that it can, indicates a policy, applies it to all within the law and seeks to bring within the lines all similarly situated so far and so fast as it means will allow." *Buck* v. *Bell*, 274 U.S. 200, 208 (1927) (Holmes, J.). It is not a basis for any complaint by the plaintiffs that the benefits extended to them are not extended to others similarly situated. See *Katzenbach* v. *Morgan*, 384 U.S. 641, 656–57 (1966).

Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69–70, 33 S. Ct. 441, 443, 57 L. Ed. 730 (1913).

C. The Rational Relationship

Even if, as the plaintiffs argue, the statute ought logically to be construed to create a separate classification affecting only unwed mothers of illegitimate children who receive some form of public assistance,[30] that particular classification is directly linked to the public interest the statute is designed to secure. In the case of these plaintiffs, it is the state, not a private party, which furnishes to the plaintiffs and their children welfare assistance in accordance with their needs. Because the state provides those benefits, it is "rational" that it should take steps to enforce the prior obligation of their fathers to provide that support. It is not disputed that the only source of information about the identity of the fathers of these children is the knowledge possessed by their unwed mothers. The classification is reasonable rather than "arbitrary or capricious" because it bears a rational relationship to a legitimate state purpose. *Weber* v. *Aetna Cas. & Sur. Co., supra,* 406 U.S. at 172.

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D. The Interests Adversely Affected

Since there is no basis for objection to the principle that parental responsibility should be enforceable, the argument shifts to one about means rather than ends. The plaintiff mothers contend that the sanctions which Connecticut permits its courts to impose upon uncooperative unwed mothers are impermissible under the Act. The plaintiffs argue that less important than the detection of the father to enforce his obligation are the consequences to the mother and child of the detection process. There is undoubted power of the government "to compel persons to testify in court or before grand juries and other governmental agencies * * *." *Kastigar* v. *United States,*

[30] "There is hardly a law on the books that does not affect some people differently from others. But the basic concern of the Equal Protection Clause is with state legislation whose purpose or effect is to create discrete and objectively identifiable classes. And with respect to such legislation, it has long been settled that the Equal Protection Clause is offended only by laws that are invidiously discriminatory—only by classifications that are wholly arbitrary or capricious. See, e.g., *Rinaldi* v. *Yeager,* 384 U.S. 305, * * *." *San Antonio School Dist.* v. *Rodriguez, supra,* 36 L.Ed 2d at 58 [footnote omitted].

supra, 406 U.S. at 443. While any imprisonment, of course, has punitive and deterrent effects, it is clear that the character and purpose of any imprisonment meted out under this statute would be for refusal to testify.

139 The proceeding under the statute is a civil, rather than a criminal one.[31] As the court held in *Shillitani* v. *United States*, 384 U.S. 364, 368 (1966), the sentence must be viewed not as punishment for violation of state criminal laws but as " 'essentially a civil remedy designed for the benefit of other parties and (one which) has quite properly been exercised for centuries to secure compliance with judicial decrees.' Green v. United States, 356 U.S. 165, 197 (1958) (Black, J., dissenting)."

> (I)t is beyond dispute that there is in fact a public obligation to provide evidence, see United States v. Bryan, 339 U.S. 323, 331; Blackmer v. United States, 284 U.S. 421, 438, and that this obligation persists no matter how financially burdensome it may be. *Hurtado* v. *United States*, 35 L.Ed.2d 508, 518 (1973) [footnote omitted].

Furthermore, unlike the plaintiff class in *Hurtado*, who were held to be kept justifiably incarcerated as material witnesses until the commencement of the trial at which they were to testify, these plaintiffs "carry 'the keys of their prison in their own pockets.' In re Nevitt, 117 F. 448, 461 (C.A. 8th Cir. 1902) * * *. In short if the petitioners had chosen to obey the order they would not have faced jail." *Shillitani* v. *United States*, *supra*, 384 U.S. at 368. Cf. *Linda R.S.* v. *Richard D.*, 35 L.Ed.2d 536, 541 (1973).

140 The choice of means may be regarded by some as harsh but "(i)t is not for us to evaluate the state's choice of means. If these means are rationally related to a proper end, as they are in this case, we have no power to go further." *Hagans* v. *Wyman*, 471 F. 2d 347, 350 (2d Cir. 1973).

The incarceration of an unwed mother for contempt, or for any other unlawful behavior, may work to the disadvantage of her child. Yet no one would be heard to argue that motherhood per se provides an absolute defense to the imposition of undesired but otherwise lawful sanctions simply because that

[31] The parties agreed to this by stipulation.

mother's child might suffer from the separation resulting from her incarceration.

That the method adopted by Connecticut's legislature is entirely permissible has been suggested in *Cooper* v. *Laupheimer*, 316 F. Supp. 264, 270 (E.D. Pa. 1970), where the court in reasoned dictum stated:

> Pennsylvania has at its disposal methods, consistent with the Social Security Act, by which it can recover excess payments. It may institute criminal prosecution against a recipient who has fraudulently obtained a duplicate payment, and upon conviction, obtain restitution, a fine and/or imprisonment. It may also file a civil action, obtain a judgment, and satisfy the judgment when the recipient is able to pay. The state may not, however, seek to protect its interests by a method which violates the Act when it has available other legitimate means.[32]

141 Throughout this case, the plaintiffs have argued as if the touchstone of our inquiry was whether the expected advantages to the state from the statute were outweighed by the harmful effects to the families affected by its enforcement. But even if the task of balancing these competing values was for the judiciary, rather than for the legislature, we would not find any basis for depriving the state of this traditional method of compelling witnesses to give answers to the inquiries under the statute. In holding that the policy favoring the right of the state to have every person's testimony may be enforced by imprisoning the witness who refuses to answer, the Court has recently held that there is no exception for one who is reluctant to testify, either for his own behalf or to shield another because of the adverse effect which such testimony might have on his future relationship with the person who is the object of the inquiry. See *Branzburg* v. *Hayes, supra*, 408 U.S. 665. The ex-

[32] In *Cooper* v. *Laupheimer*, the court ruled that Pennsylvania's attempt to adjust past overpayments of AFDC assistance by recoupment from subsequent grants was inconsistent with the statutory requirement that AFDC benefits be furnished to all eligible individuals with reasonable promptness. For a later case in this circuit holding that a rent payment, advanced to avoid eviction of AFDC recipients who had spent the portion of their grant designated for shelter for some other purpose, could be recouped out of later grants without denying equal protection nor conflicting with the Act. See *Hagans* v. *Wyman*, *supra*, 471 F. 2d 347.

posure of the plaintiffs in this case to imprisonment for contempt does not constitute an unacceptable sacrifice of competing policy interests nor contravene the Act.

To sum up our analysis of the plaintiffs' equal protection claim—we decide that the challenged statute does not suffer any constitutional infirmity under the equal protection clause because after consideration "of the nature of the unequal classification under attack, the nature of the rights adversely affected and the governmental interests urged in support of it," the statute has "a substantial relationship to a lawful objective." *Boraas* v. *Village of Belle Terre, supra,* 476 F. 2d at 814. What the Court said in *Dandridge* v. *Williams, supra,* 397 U.S. at 487, and requoted for emphasis in *Jefferson* v. *Hackney,* 406 U.S. 535, 551 (1972), is pertinent here:

> We do not decide today that the (state law) is wise, that it best fulfills the relevant social and economic objectives that (the state) might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare programs are not the business of this Court * * *. (T)he Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited welfare funds among the myriad of potential recipients.

CONCLUSION

We, therefore, conclude that the statute in issue does not conflict with any provision of the Social Security Act; that it rationally furthers a legitimate articulated state purpose in establishing the paternity of children born out of wedlock and securing support for them; that it does not invidiously discriminate against any of the plaintiffs in violation of the equal protecton clause of the fourteenth amendment; that its operation does not constitute an unwarranted invasion of privacy; and that it violates no rights guaranteed by the Constitution.

The application for a permanent injunction is denied, and the case is dismissed.

So Ordered.

Dated September 5, 1973.

WILLIAM H. TIMBERS,
United States Circuit Judge.
M. JOSEPH BLUMENFELD,
Chief United States District Judge.
JON O. NEWMAN,
United States District Judge.

Concurring in the result with opinion.

144 NEWMAN, District Judge (concurring):

I agree with the Court that Conn. Gen. Stat. § 52–440b is not unconstitutional on its face, but I believe there is an additional constitutional question that will have to be considered when the statute is applied to specific individuals. This concerns the extent of protection afforded by the constitutional right of privacy.

The Court's opinion considers and rejects primarily the Fifth Amendment and testimonial privileges as possible barriers to a mother's enforced disclosure of the identity of an illegitimate child's father. I agree with those conclusions and with the Court's further observation that the statute on its face does not invade any constitutionally protected zone of privacy. The statute's facial validity in this regard is properly upheld in the precise sense that not every application of the statute would achieve an unconstitutional result. But without anticipating all of the situations that will arise in the implementation of this statute, I think it is important to point out that a constitutionally protected right of privacy will be implicated and may well prevail against the statute's enforcement in some situations.

There can be no question that liberty, within the meaning of the Fourteenth Amendment, includes privacy with respect to some aspects of family life and sexual intimacy.
145 *Roe* v. *Wade*, 410 U.S. 113, 153 (1973); *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972); *Loving* v. *Virginia*, 388 U.S. 1 (1967); *Griswold* v. *Connecticut*, 381 U.S. 479 (1965). The Chief Justice has only recently observed that the "Constitution * * * protects * * * special privacy rights such as those of marriage, procreation, motherhood, child rearing, and educa-

tion." *United States* v. *Orito*, —— U.S. ——, —— (June 21, 1973). In its application, this statute will involve privacy rights concerning both procreation and child rearing. The latter is evident. It is certainly an important aspect of child rearing for a mother to decide whether to secure legally some actual or potential financial benefit for her child at the expense of fracturing an amicable father-child relationship or even of harming the child by inflicting upon it distressing knowledge such as incestuous parentage. Decisions on such matters would plainly seem to enjoy no less constitutional protection than the decision whether to educate the child at a public or private school. *Cf. Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925). The relationship between non-disclosure of the father's name and privacy concerning procreation requires brief elaboration.

Unlike *Roe*, where the plaintiff wanted to have an abortion, and *Griswold*, where the plaintiff wanted to use a contraceptive, these plaintiffs do not claim a right to do something but to maintain secrecy concerning what they have done. More precisely, each plaintiff asserts the right to maintain secrecy
146 concerning the identity of the man with whom she was intimate.[1] In the First Amendment context, the Supreme Court has recognized that some aspects of constitutionally protected conduct may be shielded from state-compelled disclosure concerning such conduct. Thus the right of N.A.A.C.P. members to join together to advance their purposes carried with it a right to maintain secrecy concerning the identity of the members as against Alabama's interest in enforcing its corporate regulations. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449 (1958). See also *Bates* v. *Little Rock*, 361 U.S. 516 (1960). Since privacy is the central concept underlying constitutionally protected rights pertaining to sexual matters, *Griswold* v. *Connecticut*, *supra*, it seems obvious that such rights carry with them concomitant rights to maintain secrecy concerning sexual intimacies. It is true, as the Court observes, that the inquiry of the challenged statute focuses on the father's identity, but

[1] The Court properly observes that, wholly apart from the state-compelled inquiry, the fact of the mother's pregnancy has no doubt been disclosed to some extent. But simply because the fact of pregnancy and subsequent birth is known, either widely or narrowly, in the case of mothers who not infrequently give birth to illegitimate children far removed from their communities, all rights to privacy concerning the identity of the paramour do not automatically disappear.

the mother cannot respond to the inquiry without disclosing a very private fact—the name of the person with whom she had sexual relations.

Whether related to privacy concerning child rearing or procreation, recognition of some constitutional protection surrounding the identity of one's sexual partner does not end, but only begins the pertinent inquiry, namely—whether the state has shown sufficient justification to override the protected interest. Unlike the constitutional privilege
147 against self-incrimination, the privacy protection of the Fourteenth Amendment is subject to the legitimate and substantial concerns of the state. See *N.A.A.C.P.* v. *Alabama*, *supra*. The Court identifies as the primary purpose of § 52–440b the enforcement of a father's obligation to support his child.[2] In some circumstances achieving that purpose may well be sufficient to justify impairment of the mother's right to privacy. A strong case would be presented if the father's identity is ascertainable and the three-year statute of limitations for paternity actions, § 52–435a, has not run. On the other hand, there may well be situations where the prospect of enforcing the father's support obligation is so insubstantial that the statutory purpose cannot constitutionally override the mother's privacy right. If,

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[2] In this connection, I agree with the Court that in considering plaintiffs' equal protection claim, *i.e.*, whether this legislative purpose is rationally advanced by the legislative classification, the statute should be viewed as creating a classification of mothers of illegitimate children who receive welfare. Though the statute purports to require disclosure of the father's identity not only to the welfare commissioner in the case of welfare beneficiaries, but also to guardians and guardians *ad litem*, I disagree with the Court's alternative contention that the statute thereby applies to all mothers of illegitimate children. Plainly the statute does not in terms specify that all mothers of illegitimate children must disclose the father's identity. Instead it specifies three officials empowered to compel disclosure. The statute would be comprehensive only if all illegitimate children whose mothers are not receiving welfare had guardians or guardians *ad litem* appointed for them. Guardians *ad litem* appear on the scene only with respect to certain kinds of litigation, and guardians are designated by the probate court principally in the event of a finding of the mother's abandonment or neglect. Conn. Gen. Stat. § 45–43. Sec. 45–43 also provides for appointment of a guardian where the probate court finds that removal of the parent as guardian is "for the best interests of the child," but the state had not called our attention to any instance where a probate court has construed the statute as permitting the mother's failure to bring a paternity action to be sufficient justification for removing her as guardian.

for example, the statute of limitations for paternity actions has run, it is difficult to see what legitimate interest is served by enforced disclosure. There may also be situations where the mother has disclosed the father's identity but is reluctant to strain family relationships by bringing a paternity action. Since the welfare commissioner has authority to prosecute the paternity suit, the state's interest in compelling the mother to sue might well be insufficient to justify impairment of the constitutionally protected interest she has in making decisions to maintain the harmony of her family unit. See *Haley* v. *Troy*, 338 F. Supp. 794, 804 (D. Mass. 1972).

148 We need not decide how the constitutional balance should be struck in the variety of factual situations that will come before the state circuit court judges charged with the responsibility for adjudicating contempt citations under this statute. The Court recognizes in footnote 14 of Chief Judge Blumenfeld's opinion that the statute accords the state judges ample discretion to determine the appropriateness of contempt remedies in specific cases. I simply wish to make clear that in exercising their discretion the state judges will have to adjudicate the Fourteenth Amendment question of whether the state interest sought to be advanced outweighs the mother's constitutionally protected interest in privacy in sexual and child rearing matters,[3] and they may well be obligated to conclude that application of the statute in some circumstances would be unconstitutional.[4]

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[3] In some instances privacy rights of the child might be implicated that are not identical with the mother's, in which case a guardian *ad litem* might be needed to be sure the constitutional issue is properly developed for decision.

150 [4] Procedural problems may well be encountered in developing a record to determine whether in a particular case the substantiality of the state's interest in enforcing the father's obligation outweighs the mother's privacy interest. In some cases it may be difficult to assess the state interest unless the identity of the father is known. Perhaps *in camera* proceedings can be employed in such instances. Sometimes it may be possible to persuade the trier of fact that the paternity suit statute of limitations has run without any disclosure of the father's name, as where third party testimony demonstrates that the father (or any male) has contributed no support for more than three years.

151 United States District Court
for the District of Connecticut

Civil No. 15,579

DONNA DOE, LINDA LOE, RENA ROE, SALLY SMITH AND ALL OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Civil No. 15,589

SHARON ROE AND DOROTHY POE, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED

v.

NICHOLAS NORTON, INDIVIDUALLY AND AS COMMISSIONER OF WELFARE OF THE STATE OF CONNECTICUT

Judgment

The above-entitled actions having come on for hearing on the merits before a three-judge district court, convened pursuant to 28 U.S.C. §§ 2281 and 2284,

And the Court having filed its Memorandum of Decision, Findings of Fact and Conclusions of Law under date of September 5, 1973,

It is ORDERED and ADJUDGED that the application for a permanent injunction be and is hereby denied and that these actions be and are hereby dismissed.

Dated at New Haven, Connecticut, this 7th day of September, 1973.

SYLVESTER A. MARKOWSKI,
Clerk, United States District Court.

By ——— ———, *Deputy In Charge.*

152 Supreme Court of the United States

No. 73–6033

SHARON ROE, ET AL., APPELLANTS

v.

NICHOLAS NORTON, ETC.

ON CONSIDERATION of the motion of the appellants for leave to proceed herein in forma pauperis,

IT IS ORDERED By this Court that the said motion be, and the same is hereby, granted.

February 19, 1974.

153 Supreme Court of the United States

No. 73–6033

SHARON ROE, ET AL., APPELLANTS

v.

NICHOLAS NORTON, ETC.

APPEAL from the United States District Court for the District of Connecticut.

The statement of jurisdiction in this cause having been submitted and considered by the Court, probable jurisdiction is noted.

February 19, 1974.